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CONTENTS FOR MAY

DEPARTMENTS

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THE LEAGUE'S BUSINESS

Change of Address.—As announced on this page last month, the headquarters of the National Municipal League was moved on May 1 from 261 Broadway to 309 East 34th Street, New York City. Please note this change of address for future correspondence. All members and friends of the National Municipal League will be welcome at our new headquarters.

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Meeting of Committee on Selection of Judiciary.—The Committee on Selection of Judiciary, sponsored jointly by the National Municipal League and the American Judicature Society, will meet at the Hotel Mayflower, Washington, D. C., for luncheon at 12:30 P. M., Thursday, May 5. This committee has as its chairman Dean Justin Miller, Duke University Law School; and the secretary of the committee is Edward M. Martin, public affairs secretary, Union League Club of Chicago.

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Meeting of Officers of National Municipal League.—The council and vice presidents of the National Municipal League will meet at the Union League Club of Chicago on May 14 and 15. The first session will be a dinner meeting beginning at 6:30 P. M. on May 14. At this time the work plans for the coming year and the financial requirements of the organization, now enlarged by the consolidation with the Proportional Representation League, will be thoroughly discussed.

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President Seasongood Honored by his Alma Mater.—The Hon. Murray Seasongood, president of the National Municipal League, has been appointed by the Harvard Corporation to deliver the Godkin lectures, two to six in number, at some time during the university year 1932–33. The lectures will be on "The Essentials of Free Government and the Duties of the Citizen." Mr. Seasongood graduated from Harvard in 1900, in the following year received the degree of master of arts, and graduated from the Harvard Law School in 1903. This very happy selection of Mr. Seasongood as the Godkin lecturer for next year indicates his standing among the sons of Harvard.

Last year Mr. Seasongood contributed two articles to the *Harvard Graduates' Magazine* on the subjects of "How Political Gangs Work" and "Some Recent Trends in Municipal Government." These have now been reprinted through the generosity of a friend of the National Municipal League and reprints are available free upon request at the secretary's office.

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Does Anyone Listen to Radio Talks?—Murray Seasongood, president, gave a fifteen-minute address over station WLW in Cincinnati on January 3. Two weeks later he received a letter written from Barahona, Dominican Republic, West Indies, asking for a copy of the address which was to be translated into Spanish and published for general distribution in that country. Mr. Seasongood also spoke from New York over station WOR on Friday, February 19.

*

You and Your Government.—Under this general title a series of radio addresses, as announced on this page in February, are now being broadcast every Tuesday evening from 8:00 to 8:30 P. M., eastern time. The series has been arranged by Thomas H. Reed in his capacity as chairman of the Committee on Policy of the American Political Science Association. The present series, the first in a four-year program, began on April 5 and will close July 5. Among the prominent members of the National Municipal League who will take part as speakers are Thomas H. Reed, William Bennett Munro, Charles E. Merriam, Charles A. Beard and Arthur N. Holcombe.

RUSSELL FORBES, *Secretary.*

Editorial Comment

May

NATIONAL MUNICIPAL REVIEW

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Asserting that New York City will have to pay an annual subsidy of almost $25,000,000 to maintain the five-cent fare on its subway lines when new extensions almost ready for operation are put into use, Professor Lindsay Rogers in a memorandum to Mayor Walker's Committee on Taxation suggests consideration of a 40 per cent tax on fares. This two-cent tax, he estimates, would bring about $40,000,000 a year into the coffers of the city. He points out that the dual contracts fixing the five-cent fare have been sustained by the courts and to try to raise it to seven would create many serious complications and postpone desirable unification of the properties. Such a tax would be in the nature of a sales tax and would require authorization by the state legislature.

*

In the death of Henry M. Leland, March 26, 1932, one of America's original inventors and manufacturers of automobiles, Detroit has noted also the passing of a heroic leader in municipal affairs. In 1912 Mr. Leland organized the Detroit Citizens League and for a decade was its president. The outstanding achievement of the League was the fight of Mr. Leland against crooked elections, and the establishment of Detroit's present clean, efficient election system. Other items in the record were the modern Detroit charter, effective in 1919, and a unified municipal court. Mr. Leland directed particularly the successful Cadillac Motor Car Company, for many years, later organizing the Lincoln Company. He marshalled Detroit's industrial leaders for the cause of good city government. He had just passed his 89th birthday.

*

Retrenchment in Detroit

Detroit, the Dynamic, reports C. E. Rightor, will probably spend for operation of all departments, including schools, but excluding self-supporting utilities, for the current year ending June 30, $14,500,000 less than originally authorized in the budget of $69,500,000, a reduction of nearly 22 per cent. How many cities can equal or surpass such a record of retrenchment? This is exclusive of unemployment relief, for which the city is spending $7,000,000 this year as against about $13,500,000 last year. It is also exclusive of debt service.

Comparison of these figures with the actual expenditures for the previous year, including expenditures for welfare in both years but again exclusive of debt service, reveals that Detroit is operating on a basis of approximately

$24,000,000 less than the previous year.

A quarterly allotment system is partially responsible for this showing, which is retrenchment with a vengance.

*

A Manager for New York City

One of the concrete results of the Seabury investigation into New York City's government has been a definite movement to secure a city manager-proportional representation charter for the nation's largest municipality. In public utterances Judge Seabury has indicated a sympathetic interest. Recent addresses by Mayor Wilson and ex-Mayor Seasongood of Cincinnati have helped along local understanding of what New York newspapers call the "Cincinnati plan."

However, some sincere advocates of manager government for type cities doubt its suitability to very big cities where political organizations are strongly entrenched and where the need for personalities in politics seems greatest. To this school belongs Joseph D. McGoldrick who, in an article in this issue, argues against the manager system for New York until it has had more opportunity to demonstrate its permanent effectiveness elsewhere. He disagrees with those who hold that the present charter, ponderous as a telephone book though it be, requires drastic reorganization. He wants his readers to understand that he heartily approves the manager plan for smaller cities; it is only in the case of New York that he counsels delay.

Dr. Schieffelin, who as president of the Citizens' Union has been fighting for many years the worst evils of Tammany control and is now serving as chairman of the New York Committee of One Thousand, replies with an unqualified "Yes, manager government is suitable for New York." Assuming that in a council elected by proportional representation Tammany would still have a majority, there would, nevertheless, be found a minority which by its mere presence would prevent the grosser extravagances of today. The election of the mayor and other administrative officers is not necessary to popular interest if by interest is meant discussion of real issues at election time, as an alternative to the primitive combat known as a mayoralty election.

But Dr. Schieffelin by no means concedes that Tammany will control a P. R. council. Two groups, those who now vote and believe in the merit system, and those who believe in it but through a sense of futility are not now voting, are more than enough to overthrow Tammany, he believes.

We know of no literature in which the issues for and against manager government for a city like New York are more clearly drawn than in these two articles.

*

An Electricity Sales Tax

Congress in its search for new revenue has not overlooked the possibility of a sales tax on electric energy. At this writing it is too early to know what the final decision at Washington will be; but advocates of this new form of taxation are sufficiently numerous and influential to compel serious attention to the desirability of such a tax.

The usual arguments for and against general sales taxes or special sales taxes are well known to readers of the REVIEW. The proposal for a special tax on electricity, however, is novel and in weighing the case for it emanating from Washington careful consideration must be paid to the other side.

We are in receipt of a letter from Professor Thorndike Saville of the School of Engineering of the University of North Carolina which succinctly

sets forth the negative side of the question. With his permission we quote from it as follows:

I feel that such a tax would be unwise from two major considerations. The first is, that I believe that taxation of electric energy in any form should be left to the states, as a source of revenue restricted to them. In the second place, I cannot see any way by which a federal tax, which must necessarily be general in nature, can be at all equitably administered.

It will unquestionably prove harmful to industry if carried to its logical conclusion. It is my feeling that the only proper tax is one which is based on net income. Such a tax can be equitable. Unfortunately to make such a tax equitable requires a vigorous state regulatory body fully equipped with technical personnel, and willing and able to dig into the financial and structural background of electric generating companies to determine on a sound basis just what the true valuation of the property devoted to the public service may be, the proper operating expenses, and from that the proper net revenue subject to taxation. In very many of our states we do not have regulatory bodies, either equipped with technical personnel adequate to undertake this work, or possessed of a public consciousness which stimulates them to undertake it.

It seems to me inevitable that any federal tax of a general nature on electric energy is bound to be discriminatory as between different parts of the country. One of the things which has been most helpful in the industrial development of the South and certain other areas has been the so-called diversification of industry. We have scattered all over the state of North Carolina and many other southern states small industries located in little towns remote from the larger centers. I believe that sociologists are united in considering this a most desirable kind of development. It has been brought about largely by the availability of electric energy at reasonable prices transmitted over high-power transmission lines. If a general tax were imposed upon electric energy, it seems to me inevitable that in many cases industries would find it more economical to generate their own power. To do this to best advantage, they would probably have to be located fairly near large centers where rail transportation was available. This would bring about a cessation in the diversification of industry which I believe would be disadvantageous.

Our readers will agree that the electricity sales tax, which may sound simple and desirable to the uninitiated, on closer investigation presents extremely serious difficulties.

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Political Veto of New York Civil Service Bill

Displaying a regretful weakness for trimming, which seems to be characteristic of late where Tammany is involved, Governor Roosevelt recently vetoed the Hewitt civil service reclassification bill because of the "extraordinary and autocratic power" which he asserted was conferred upon the proposed director of classification. The bill had the backing of numerous civic organizations including the Civil Service Reform Association, the City Club of New York, and the Citizens' Union. It was also supported by the state civil service commission, the State Civil Service Employees' Association, and leading civil service reformers headed by Colonel William Gorham Rice and Dr. Frank P. Graves, state commissioner of education.

In his veto memorandum, after protesting his life-long interest in civil service and approving the general purpose of the measure, Governor Roosevelt objected that it vested improper powers in an individual appointed in a most extraordinary

manner, czar-like powers which would supersede the civil service commission, the governor, the director of the budget and the heads of departments.

The simple fact is that the proposed law, designed to bring about an effective classification in the civil service and to keep such classification current, was viewed by the Democratic organization as dangerous to their friends in the classified service. While decent reclassification usually means a leveling down of some salaries and an increase of duties in some positions, it is noteworthy in this case that the bill was supported by the organized civil servants of the state. The measure did not extend to municipal service but might have eventually been applied to the county service of New York over which Tammany exercises a particularly watchful care. At the executive hearing the bill was grossly misrepresented and these misrepresentations the governor accepted in his veto message.

In substance the bill created a new office of director of classification to be filled by competitive examination. It was made the duty of the director to prepare a classification plan for the approval of the civil service commission. Once the plan was adopted, the allocations of positions to classes were to be made by the appointive officers subject to approval by the director of classification. If the appointive officer failed to act after due notice, the director of classification was authorized to make the allocation himself. Changes in classification or allocations from time to time were authorized in accordance with the original procedure.

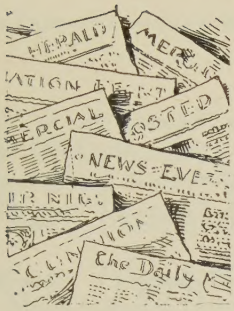
After consultation with the appointive officer the director of classification was empowered to recommend to the civil service commission a compensation plan which, upon approval or modification by the commission, was to be transmitted to the governor and the legislature for their consideration in the enactment of a compensation code for the classified service. The director of classification was also made the instrumentality of the civil service commission in the establishment and maintenance of service standards and ratings.

How this new officer could properly be termed a czar passes the editor's understanding. His function was to be primarily the function of recommendation. In respect to finance, the compensation plan, even after approval by the commission, was merely for the consideration of the governor, the legislature, the budget officer, and other executive heads concerned.

By and large, the Hewitt bill reflects the trend in personnel administration embodied in the section on personnel of the League's *Model Charter* now in process of revision. The governor's veto would have been more respected had he frankly admitted the reasons for it rather than seeking shelter behind a confused network of pious exhortation and careless, if not willful, misrepresentation.

*

The Missouri Supreme Court has decided that the initiated ordinance on the question of municipal acquisition of the Kansas City street railway system need not be submitted to the voters. The city contended that the ordinance was unconstitutional and that, therefore, it should not be compelled to call the election. At this writing the written opinion of the court is not before us, the court having merely announced orally that the writ of mandamus ordering the election was denied.



HEADLINES

Detroit probably holds the record for budget cuts. The city is now operating on a basis of approximately $24,000,000 a year less than in 1931. Even so, however, it has been unable to balance its budget, and employees are faced with the possibility of receiving only two months' pay for three months' work, April, May and June.

* * *

According to our esteemed contemporary, *Public Management*, Governor Lowden "sighted" Cook County with its 392 independent local governments as an example of "too many governments." Chicago's machine guns must have been on a vacation if he sighted Cook County before he heard it!

* * *

"Ballot-Whoo" is the challenging title of a campaign document put out by the Michigan McKeighan-for-Governor Club without apologizing to Oscar Zilch.

* * *

The vigorous retrenchment program applied principally to Republicans by Mayor Ray T. Miller of Cleveland reached finally to six mothers employed as charwomen in the city hall, who were promptly replaced by "deserving Democrats" and who will have to be supported henceforth by the city welfare department. The mayor might have been more careful—if he wasn't touched by human considerations, he might at least have found out that two of the six mothers voted for him and one, who was not entitled to vote, worked for his election!

* * *

That the new administration in Cleveland is operating on the old theory of "to the victor belong the spoils" is substantiated by charges from the executive committee of the Citizens' League of Cleveland that there is flagrant disregard of the merit system in the new government.

* * *

A new charter for Nassau County, New York, a suburban county on Long Island near New York City, has been drafted which incorporates some of the simplification of government ideas involved in the city manager plan. The charter has compromised sufficiently with practice to receive the endorsement of the county Democratic organization.

* * *

Add to cities with a surplus—Kenosha, Wisconsin. Auditors for the Wisconsin tax commission have verified a cash balance of $77,800 reported by the city

manager at the end of 1931, and this despite the fact that its expenditures for welfare were multiplied by four over the previous year.

* * *

A "tax disarmament conference," held at the Iowa State House in March, drew representatives from almost every county in the state. The Iowa plan is to have the work of the state legislative committee on reduction in public expenditures backed up by local taxpayers' associations.

* * *

Tammany Hall was openly pleased by Governor Roosevelt's veto of the Hewitt civil service reclassification bill. The governor said it would confer "extraordinary and autocratic power" upon a proposed director of the reclassification. More to the point was Tammany's objection that the bill would raise the educational standards for public employees. That, indeed, would be a tragedy!

* * *

Because she had become an issue in a political campaign, Miss Vivian I. Milner, only woman city manager, has resigned her position in Kinsley, Kansas, on the ground that for her to take part in politics would violate the ethics of the profession. Reformers—hail the millennium!

* * *

The city manager of Cincinnati who at the salary of $25,000 a year is the highest paid municipal official in the country with the sole exception of the mayor of New York City, costs each citizen of Cincinnati just nine cents a year. Is he worth it? Ask them!

* * *

Frankness in a candidate is a commendable and too infrequent a virtue. A Louisiana assessor, desiring to be reëlected, announced proudly that he had reduced taxable values all the Louisiana tax commission would permit, pointing out that the tax commission fixes the values. His election advertisement declared that through his "*influence* the assessment of land in agriculture was reduced $5.00 per acre and pasture land $2.50 per acre in 1931."

* * *

City-county consolidation is much easier to accomplish than consolidation of several counties where different county seats are involved and there are a number of successful examples that can be cited. Consequently, it is not improbable that consolidation of Birmingham, Alabama, with Jefferson County, which is being vigorously advocated by press and public officials of that city, will actually be realized.

HOWARD P. JONES.

Is the City Manager Plan Suitable for New York?

NOT until its advantages for big cities have been more clearly demonstrated, says Dr. McGoldrick

BY JOSEPH D. McGOLDRICK — *Columbia University*

NEW YORK CITY has had the same charter for over thirty years. The document is as ponderous as our telephone book. It has been abundantly amended by the state legislature in each of the thirty years which have elapsed since its original passage; and in the last seven years many local amendments have been added to it under the city's home rule power. Certainly the city's fundamental law could well be simplified and clarified. There are many, however, who think that more drastic reorganization is called for. For some years back civic organizations have been interested in the city manager plan, and have been urging this as a panacea for New York's plentiful ills. The recent promise of Judge Seabury in presenting his preliminary report to the legislature, that he would presently enter the constructive phase of his inquiry, has again focused attention upon the manager plan. A loud chorus is now supporting this demand.

The American people have long sought to conquer the forces which have made their city government notorious for corruption and mis-management by changing the mechanisms through which urban democracy expresses itself. Perhaps it is another expression of our mechanical genius, but we seem to have limitless fancy for, and faith in, governmental mechanisms of all sorts.

OVER-EMPHASIS ON THE MANAGER

The city manager plan is essentially quite simple. It consists on the one hand of a council, and on the other of a manager appointed by it and at all times responsible to it. The function of the council is to formulate policy; that of the manager to carry it out. The manager appoints all department heads and in him is concentrated all responsibility for administration. He prepares the budget for submission to the council; the council scrutinizes the budget, amends and adopts it. The people elect the council; the council selects the manager. The manager is responsible to the council; the council is responsible to the people.

It is obvious, therefore, that it is a great mistake to lay too much emphasis upon the function of the manager, or to expect too much of him. Fully as important is the character and composition of the council. This is too often overlooked by those who speak of the city manager plan as offering the ideas of scientific, businesslike administration. The manager plan will not work well—indeed, cannot work well—unless the city is assured of an excellent city council.

The first thing that the proponents of the manager plan for New York City should do, therefore, is not to dream of the efficiency which a trained manager could inject into the conduct of New York City's business, but to think of how a council could be chosen that will provide the type of manager who would bring this vision to realization.

New York City at present has two councils—the board of estimate, in which most real power lodges, and the board of aldermen, which time has reduced to useless senility. The board of aldermen has few functions that are of any practical importance, and these few it mockingly neglects. One may ask, therefore, of those who advocate the manager plan, whether they would propose to build their city council out of the existing highly developed board of estimate, or whether they would seek to breathe new life into the mordant aldermanic body.

The board of estimate is, as city councils go, a highly effective institution. It consists of eight members. Three of these, the mayor, comptroller and president of the board of aldermen, are elected by the city at large, and they have three votes each. The other five members are the presidents of the city's five boroughs, of whom the presidents of the boroughs of Brooklyn and Manhattan have two votes and those of the other boroughs one vote each, making a total of sixteen. The board has a huge staff of engineers, accountants and examiners, costing $500,000 annually. For it to operate in conjunction with a city manager, however, would require considerable reorganization of its present functioning. It is not as representative a body as might be desired. Its existence is deeply rooted in our peculiar borough system. It may well be, however, that the difficulties presented in adjusting the manager plan to New York City's existing arrangements would not prove insuperable.

WOULD PERSONNEL BE IMPROVED?

Let us suppose, therefore, that the manager plan were to be adopted either in the simple form in which it has been successfully developed elsewhere, or in some custom-made version cut to fit New York's peculiar measure.[1] The really fundamental question would remain as to whether the mere adoption of the plan carries with it a guarantee of good government under it. Would there be any assurance that the city council would not consist, at least as to its majority, of the very type of men, even, indeed, the very same men, who now dominate our councils? Would not the very same political organizations which now select candidates and regiment voters to their support, continue to do this under the new plan? What promise have we that they would suddenly abandon the pleasant and profitable business in which they are now engaged?

It is urged that a nonpartisan ballot or some scheme of proportional representation would demobilize the political party. These organizations are now solidly entrenched. They go to the polls with a vast army of well trained and well disciplined mercenaries. Against these solid phalanxes any amateur effort would seem quite hopeless. Increasing the importance of the city council might interest a superior type of man in that post, but he would still be confronted with a compact and experienced organization that he would have the greatest difficulty in defeating. A few unusual persons might push through and rout the organizations in particular districts or for particular quotas, but there would be

[1] See "The City Manager Plan for New York City" by Richard S. Childs (pamphlet, City Club of New York, 1932).

every likelihood that a majority of the new city council would be members of the existing dominant machine.

If it be true, then, that essentially the same organizations are to control the city council, and that essentially the same type of men will be seated in it, would there not be every reason to suppose that these organizations and their city council would select its manager on the very same principles that now influence them in the selection of the functionaries who now run our city?

The answers to these questions seem obvious enough. There would remain then only the question whether the existing personnel in political and public office would be likely to give better government under a city manager plan than under existing arrangements. In certain respects one must answer affirmatively. In so far as the creation of the manager plan introduced a simpler administrative structure, concentrating all activities under a dozen or more department heads, all of them responsible to the city manager, there would be an improvement in the conduct of city business.

VOTERS' CONTACT WITH ADMINISTRATION DESTROYED

Concerning the more fundamental implications of the query, however, one can be less certain. The city manager plan fundamentally removes the voting public from direct contact with administration. The voters would no longer participate in the election of a mayor, comptroller, and president of the board of aldermen. Their activities would be confined to voting for candidates for the city council. It is hard to imagine that a city council of less than twenty-five members would be proposed. One may ask, then, whether the election of members in such a body as this would arouse as much popular interest as the election of the mayor and his colleagues now does. It is not enough to offer in answer the experience of Cincinnati, Cleveland, Rochester and other places, for the simple reason that none of them have had sufficiently long experience with it to demonstrate that the manager plan will stand the test of time. Almost any governmental mechanism will work well when it is new. This seems to be due to the fact that its very adoption has required a considerable arousal of public sentiment, and this sentiment retains its interest in the new institution and watches over it until novelty wears off. The experience of Kansas City, and the more recent history of Cleveland and Rochester, suggest that the manager plan is by no means foolproof. The first two or three councils elected under the new plan in the latter two cities were of a high order, but this cannot be said of the councils chosen in both of them last November.

The manager plan has the great virtue of simplicity. It is easy to locate responsibility in it. It has the further merit of logic. It removes the choice of the administrator from the hurly-burly of election, with a view to seeking an efficient and trained professional for the place. It seeks to rejuvenate our senile city councils by re-emphasizing their important task of formulating public policy.

IS CIVIC LEADERSHIP PROVIDED?

In small cities it is working well. In some of them it has worked well over a fairly long period of years. In Cincinnati it is working uncommonly well. One may question, however, whether a city of the size of New York does not require more civic leadership than the manager plan offers. If the selection of a city council, possibly with the introduction of proportional representation, would accomplish this, substantial

progress could be expected. Proportional representation, however, would seem calculated to insure only the adequate representation of minority groups. It secures the election of representative men—not necessarily good men. Our present system, of course, secures neither.

The present board of aldermen, with sixty-four Democrats and one Republican, is clearly out of balance. Proportional representation would seem to promise a Republican minority of twenty or more, with perhaps one Socialist. The notion that New York City's charter needs drastic reorganization is much exaggerated. There are one or two major operations that are called for, and quite a number of minor ones. Some of the things that most need doing would, however, occasion bitter controversy. The gains from them would produce very little economy so long as present political groups are in control. If illustration of this point were needed one has only to turn to the department of sanitation, created three years ago. The units that went into this department were costing $30,635,062 at the time of its creation; today they are costing $38-316,322. But while the total cost of the departments was increasing 27 per cent, the cost of administration rose from $1,993,649 to $3,051,260, or 58 per cent.

In short, the manager plan, while it contains some lessons from which New York may profit, offers no permanent solution to our ills. It may well be that the plan would have to be patterned more directly upon the Parliamentary scheme of government, as developed in Europe. A less radical scheme might be to consolidate such offices as that of budget director, commissioner of accounts, commissioner of city planning and assistant to the mayor, into a reorganized executive department. The assistant to the mayor, as the head of this department, might well be developed into a city manager with general supervision, under the mayor, of all of the city departments. But to attempt completely to recast our city government until the manager plan has had more opportunity to demonstrate its permanent effectiveness, would be folly indeed.

The City Manager Plan Is Suitable For New York

EVEN if Tammany controls the council, a city manager-proportional representation charter will prevent the gross extravagances of today, is Dr. Schieffelin's reply to Dr. McGoldrick

BY WM. JAY SCHIEFFELIN — *New York Committee of One Thousand*

THERE is now in New York City a régime which may be described as government by favor. Policy determiners and administrators elected by Tammany and those appointed by these elected persons have one query always in mind: In what way can the situation in hand be used to advance the personal fortunes of those who belong to the organization, or of those whose allegiance may be bought? The interest of the organization is the primary object, and the performance of governmental services merely a means to that end. Indeed such services may be scamped, corrupted, or run extravagantly as long as the personal fortunes of the followers of Tammany are forwarded and the political future of the organization not jeopardized too much.

Such a régime is costly; there can be favors for some only by handicapping others. Many people can be made to pay a great deal for such a type of government providing they get a small favor themselves every so often. Now, however, the public is awakening, and the difficult art of seeing farther than the end of one's nose is being learned even by New Yorkers. Hence the number grows of those who would prefer the merit system to the favor system. The more thoughtful of these believe that the election of administrators almost inevitably invites patronage and the favor system and, seeing that the manager plan as a whole results in lower governmental costs for service, are advocating it for New York City.

P. R. WILL PROVIDE THE COUNCIL

Whereupon Dr. McGoldrick asks many questions of such advocates and offers a word or two of advice. "The first thing," he tells us, "is to think how a council could be chosen that would provide the type of manager who would bring this vision to realization." The answer is, the council should be elected by the Hare system of proportional representation, the boroughs should constitute election districts and elections should be by a fixed quota of possibly fifty or sixty thousand voters. It is proposed that all legislative power now vested in the board of aldermen and the board of estimate be vested in such a council. All administrative duties now performed by the board of estimate either as a body or as individuals would be assigned to a city manager. The boroughs would continue as administrative units in charge of borough managers appointed by the city manager, though possibly having seats without votes in the council.

The first question Dr. McGoldrick asks is "whether the mere adoption of the plan carries with it a guarantee of good government under it?" The answer is, emphatically, no. To have the merit principle operating throughout the city government, it will be necessary that a majority of those voting for councilmen shall express their preferences for candidates who are not only pledged to the merit principle but whose public record demonstrates that their pledges are reliable. Is it reasonable to believe there is such a majority in New York City as there is in Cincinnati but possibly not in Cleveland? There is good reason to do so, first because probably one out of three of those who now vote evidently believe in the merit principle; and second, because many of those who usually abstain from voting do so for the reason that they object to the favor system, but since the opposition to Tammany is largely composed of favor seekers, they have found it useless to vote. Once they grasp the effectiveness of every ballot under the Hare plan, they will reappear at the ballot box. The two groups, those who now vote and believe in the merit system and those who believe in it but are not now voting, are more than enough to overthrow Tammany.

BETTER GOVERNMENT EVEN UNDER TAMMANY CONTROL

But suppose at first a majority of the voters give their preferences to candidates who support the favor system, then the city manager plan will give better government than is now had but not so good as it might be. The minority members whose presence in the council the Hare plan assures will serve as a constant spur and whip to the majority. In other words, Cleveland's experience, where the minority members dragged the land scandals to light, resulting in prison sentences for some of their fellow councilmen of the majority, would become a possibility in New York City.

It is to be expected that the "political organizations which now select candidates and regiment voters" would continue to do so, as Dr. McGoldrick points out. But they would not select all the candidates, and because they cannot now regiment all the voters, they would not then. Hence they could not elect all the councilmen. We offer no promise that the present rulers will "suddenly abandon the pleasant and profitable business in which they are now engaged," but if only those who now vote in opposition continue to do so, the share of the councilmen which P. R. will give them will cut the tiger's claws quite close to the quick.

Dr. McGoldrick closes this series of questions by a sentence which implies that the only answer that can be made to them is that a city manager-P. R. council scheme for New York must necessarily have "the same type of men" seated in the council that are now in the board of aldermen. The P. R. election would remove many of the present type and substitute others so radically different in outlook, philosophy, and capacity as even to make blasé New York sit up. The low councilmanic salary in Cleveland which prevented many first-class, independent candidates from appearing is offset by the New York alderman's salary of $6,000 a year.

THE QUESTION OF POPULAR INTEREST

Dr. McGoldrick then turns to the question of public interest: Will "the election of members in such a body as this arouse as much popular interest as the election of the mayor and his colleagues now does." That calls for a definition of the word "interest." If

the function of an election is to provide a safety valve for the alleged primitive instinct of combativeness, and if it is a spiritual necessity to feel elation at not only having had one's favorite win but at having one's opponent lose, then interest will not be so high as now, for as has been said, a P. R. election is "the substitution of the ethics of the conference for the ethics of the conflict." But if by interest is meant discussion of real issues at election time and a continuing interest in the debates which take place between one's favorite and the best representative one's political opponents can elect, then interest will increase and not decrease.

New Yorkers are basically the same as human beings elsewhere. Hence it should be found that they will have as much interest when they elect only members of the city council as have Londoners, Berliners, Parisians, or Dubliners. They too inhabit huge cities, they too hold themselves down to electing only members of the policy-determining body, and who shall say that their interest is less than New Yorkers in the government of their respective cities?

Dr. McGoldrick closes by lamenting that the manager plan, "offers no permanent solution to our present ills." Only those who have the secret for discovering potential benevolent autocrats can offer that. The P. R. council-city manager plan is suggested for New York because it does ensure that whenever a majority of the voters want the merit system the "controlled executive" must install it or lose his position to one who will; that even if a majority does not want the merit principle, the proportionally elected council will give the minority official voices which they will continually use. By their mere presence they will prevent the grosser extravagances of today from ever being proposed, let alone carried out.

The Philadelphia Tri-State Plan

After four years of work the Philadelphia Tri-State Plan has been presented to the public of the region

BY SAMUEL P. WETHERILL, JR.[1] *Philadelphia*

The value of wise planning is so obvious to the initiated that generalizations on this aspect would be superfluous. Yet the harsh fact still faces us that many a fine plan does not work —sometimes because of inherent deficiencies which impede its adoption or execution, more often because of factors of human psychology, which, if they do not create hostility in advance, at least make the practical use of the plan uphill work.

Theoretical merit in any plan has a kind of educational and technical value, just as in any great work of art from the hand of a master craftsman. It may inspire, it may suggest, it may reflect distinction on its makers, and set high standards of perfection.

But the people who appropriate our public funds and are responsible for progress planned or unplanned are rarely artists, are generally indifferent to merely theoretical considerations, and are properly most sensitive to the considerations of the immediate and ultimate interests of their constituencies.

STRATEGY OF THE TRI-STATE FEDERATION

For several years before the Regional Planning Federation of the Philadelphia Tri-State District was undertaken, it was recognized that the problem was not alone one of preparing a good plan and that its whole solution would involve three phases:

1. The phase of testing out sentiment as to whether or not a plan was wanted, not to be laid away among dead historical documents, but to be fought over and changed and used. Innumerable illustrated talks were given throughout the region, with emphasis on the outlying areas, to reassure those who dreaded excessive domination by the central cities. Conviction was carried that local autonomy was not menaced, that local self-interest was definitely identified with regional interests, and that wise local planning should be skillfully woven into the over-all regional pattern.

Local citizens' associations, trade associations, banks, utilities and business houses passed resolutions of endorsement, appointed coöperating committees and delegates, and proved the sincerity of their affirmative answer to our question by doing yeoman's service in raising the funds with which to carry on the work.

2. With $600,000 of real money in hand, the next phase was the making of the plan. Here again, our contacts with the various localities were or-

[1] Colonel Wetherill is president of the Regional Planning Federation of the Philadelphia Tri-State District.

ganized so as to insure full local and functional representation in our technical and administrative structure. The people who said they wanted a plan were called upon to help make it as useful to their own localities and interests as it could be, consistently with the interests of their neighbors.

This second phase of the problem, begun July 1, 1928, was brought to a close on the evening of March 16, 1932, when the plan was presented to the representatives of the nearly four hundred political jurisdictions within the forty-five hundred square mile area covered by the plan.

3. The last and continuing phase now confronting the Federation is in fact already well under way—the phase of informing the voters at large, with a view to early and widespread conformity with high community standards, and the adoption and execution progressively of those elements in the fifty-year program for which conditions are ripe.

COUNTY PLANNING ASSOCIATIONS BEING DEVELOPED

Our board of directors has carefully weighed the advantages and disadvantages of developing studies and cooperating organizations along county lines, and has decided that the advantages outweigh the disadvantages. From now on our field organization will be busy in building up county planning associations to support the plan and enlist the support of the voters. The presidents of these county associations will be the vice-presidents of the Regional Planning Federation, and will thus insure local working accord with the over-all plan.

Many county planning agencies, official and unofficial, are functioning in the area, and much planned progress has been made to date.

The general work of the staff has been coördinated by a large technical advisory committee and a comprehensive plans committee, under whom maps have been prepared which indicate present and prospective development with reference to population trends and land uses.

The subjects on which studies have been made, under thoroughly representative functional and local committees, include population, highways, port and rail, aviation, parks and public reservations, sanitation and water. Separate discussions and proposals covering these subjects are being released to the press weekly, after which the five hundred page volume of reports, maps and illustrations will be published for official use and will be on sale to the public.

President Hoover, master advocate of engineered community progress, has given encouraging recognition of the work thus far accomplished and of its importance for the future in congratulating us "*upon bringing to this point a coöperative labor of such outstanding and permanent usefulness.*"

Perhaps the outstanding contribution of this plan is the emphasis it has laid on the coöperative as against the bureaucratic method of its inception, support and preparation.

I believe it marks a beginning in the direction of democratic effectiveness which will enhance the administrative reputation of American municipalities, and justify increased public confidence in them.

The Building of New York

THE Regional Plan's concluding recommendations for the guidance of New York City's growth

BY ARTHUR C. COMEY *Harvard School of City Planning*

IT MAY not have been realized by all of those who perused Volume I of the Regional Plan of New York and its Environs [1] how much more remained to be done to put flesh and clothes on the skeletal basis of the picture of the great region of the future. In the two and one-half years and more that have elapsed since the Plan was first presented to the public much of this material has been expanded by the collaborating architects and others and re-analyzed by the director of the Plan, Thomas Adams, the author of the final, profusely illustrated, six hundred-page volume.[2]

Without refuting the findings and proposals of the graphic plan, the emphasis is now turned in the direction of city construction, civic art, individuality of communities, the guidance of building through land planning, zoning and housing policy, the improvement of central New York terminals, the increasing of the capacity of the street system by double decking and other means, and the rebuilding of a multitude of specific areas both downtown and in the suburbs along lines of great architectural magnificence.

In the words of Frederic A. Delano, chairman of the Committee on Regional Plan of New York and Its Environs since the untimely death of its first leader, Charles Dyer Norton, "This task has involved the initiation of many ideas and projects in addition to the supervision and coördination of proposals and designs of collaborators; the development of a new philosophic conception of city planning under modern conditions in a democratic country; and the study of every fact and line of text in the reports leading up to the whole ten volumes of the Survey and Plan. In this volume Mr. Adams presents a conception of the spirit that enters into the making of cities, an outline of the principles and standards that must be followed in guiding the building of cities in the New York region."

STANDARDS OF CITY GROWTH

To quote Mr. Adams, "The fundamental problem in planning a city in a democratic country is to advance the intelligence and arouse the spirit of its citizens so that they will guide its development in those directions that will afford social satisfaction. The

[1] Reviewed in NATIONAL MUNICIPAL REVIEW, July, 1929, p. 435.

[2] *The Building of the City.* By Thomas Adams. Vol. II, Regional Plan of New York and Its Environs. New York, 1931. 600 pp. with nearly 300 illustrations and 90 maps and diagrams.

chief responsibility for guidance of development must come from those who have or assume power to lead—whether through political position or special knowledge." The present volume seeks to establish and disseminate, from the point of view of civic art, criteria for New York as related to street planning, architecture, work and living conditions, the relation of beauty and reality in civic art, and finally the "spirit of New York."

The report then proposes guiding principles and standards for regulating buildings and land for building to secure health and social welfare. We are sorry to note that, while 80 per cent is set down as a reasonable maximum coverage of lots in the central business district, 60 per cent coverage is proposed to be permitted in suburban residential districts, this in spite of the fact that recent demonstrations have proven that 50 per cent coverage is quite apt to give excellent financial returns even for apartment houses in the city. To be sure, under zoning proposals 50 or even 40 per cent is proposed for the maximum coverage in open suburban areas, but here again prevailing practice and standards elsewhere result in only 35 or even 25 per cent coverage for the ordinary single-family dwellings. On the other hand, current zoning in New York is proposed to be much stiffened, especially as related to skyscrapers, and detailed standards are set forth for this and for extending zoning on a uniform basis over all suburban areas throughout the region.

Under housing proposals it is recommended, among other things, that cities acquire land, improve it with streets, parks and utilities, and sell or lease the balance under appropriate restrictions for the private erection of houses, thus assuring, better than can be done by any other method, the quality and type of the new residential neighborhoods. In respect to new communities, the Hackensack meadows are again recommended for "a great industrial city, in which the application of the latest knowledge of city building would be unhampered by any development already in existence." Locations for other new communities are not specified, but principles are enunciated governing their design, permitting, however, a wide latitude of treatment.

THE SKYSCRAPER

The skyscraper is not condemned, provided a reasonable amount of open space about it can be secured. The report carries illustrations of many great schemes, culminating in a civic center building, alongside of which the present Municipal Building is but a dwarf, rising scarcely above the broad base upon which the great tower building is to rise one thousand feet or more. A rather fatalistic attitude is taken towards congestion in this neighborhood, the plea being that this gigantic structure would merely take the place of other private buildings that might use up the transit and street facilities to the maximum that it is possible to provide, zoning being unable to prevent such concentration.

To the city planner, among the most interesting aspects of the plan are those concerned with such matters as the distribution of population through decentralization and "recentralization." Mr. Adams states that "There is a group of social philosophers whose gospel is 'decentralization,' no matter how unplanned and haphazard it may be. To them, the most pressing urban problems would be solved if the economic forces that draw industries and people into huge cities and disperse population into small urban and rural units could be broken down. . . . But the exponents of this theory do

not stop to think that unplanned and uncontrolled dispersal is as bad as unplanned centralization. It is the quality of a particular development that matters. . . . Next to the problem of congestion in the centers of the large cities the most defective condition is the too wide dispersal of houses on premature subdivisions in semi-rural areas. An intelligent compactness of development is required to enable the improvements needed for healthful and convenient living conditions to be provided or to prevent enormous waste of money in extending improvements over areas of widely scattered houses." With properly planned areas for extension and for new self-contained communities "dispersal will proceed by forces of attraction. It is futile to talk of compulsion. . . . Conditions will continue as they are except to the extent and degree that they are changed by conscious effort."

WILL TRANSPORTATION LESSEN CONGESTION?

It is not held to be certain that the motor vehicle and electric power will lessen centralization. "Coal, oil and water power will continue to be the three fundamentals for developing both production and distribution through manufacture and transportation." New York's transportation facilities are so exceptional that "it can obtain all the energy it needs from coal and oil at the minimum of cost. . . . These things will mean the continued growth and development of city-regions, and the continued depletion of the countryside. The query, 'Why not live in the city?' will have a stronger appeal than ever."

There are, therefore, still great potentialities of growth in the New York region. The motor vehicle will assist wider distribution of industry and population within the region only as it enables them to spread circumferentially instead of in radial corridors as in the past along the railroads. (In other great city-regions radial distribution has been deemed the more beneficent of the two alternatives. A. C. C.) "Every transportation facility that makes for convenient access between the periphery of a city and its centers promotes business concentration in the centers as well as residential dispersal in the environs. More means of communication around cities, at some distance from the centers, are needed to spread both industries and population effectively, and an object of the Regional Plan has been to show how this result can be attained. . . .

"The Regional Plan is a beginning and the next step is education. . . . To bring the possibilities to fruition requires the development by education of the philosophic outlook of the citizens. . . . The Regional Plan . . . is an attempt to arrive at a philosophic conception of the future of New York and the surrounding regions."

This volume marks the climax to the work of the Committee. Mr. Delano states that "The duty of carrying on the educational work and promoting the development of the Region in harmony with the Regional Plan has been undertaken by the Regional Plan Association, a permanent body that has been formed for this purpose, under the distinguished leadership of Mr. George McAneny."

Seattle Gayly Elects a Mayor

DORE, a prize showman, wins a bizarre campaign over a more responsible candidate

BY JOSEPH P. HARRIS

University of Washington

THE Seattle municipal election of March 8, with the nonpartisan primary two weeks earlier, stirred the city with its bitterness and its humor, and brought out a record vote, exceeding that cast for president in 1928. Two of the candidates for mayor proposed to advertise the town in order to increase the number of tourists, and one of them, a popular orchestra leader, by his bizarre campaign attracted attention throughout the country.

Ten candidates filed for the race for mayor, which was the main event of the show. The incumbent, Robert H. Harlin, a former labor official, who was appointed by the council to fill out the unexpired term of former Mayor Edwards, was a candidate with the support of organized labor. Frank Edwards, recalled from the office of mayor last summer, ran in order to vindicate himself. John F. Dore, prominent in the recall of Edwards, defeated candidate for prosecuting attorney two years ago, and widely known throughout the city, early in the race became the leading candidate. Other candidates for mayor were: Otto Case, a leader of the council and former candidate for the office; Art Ritchie, former editor of a local newspaper and at present an advertising man; Dr. E. J. Brown, an advertising dentist, former mayor of the city; Vic Meyers, leader of a popular orchestra; and three others who polled negligible votes.

THE RECALL OF MAYOR EDWARDS

Something should be said of the background of the election. Last July the city recalled Mayor Edwards, after a long campaign of charges of fraud, graft and mismanagement of the city departments, made principally by one of the local newspapers. The particular occasion for the recall, however, was the removal of J. D. Ross on the eve of the city election a year ago. Edwards was recalled by a large majority, though the total vote cast was small. The council proceeded to elect Harlin mayor for the unexpired term. Harlin immediately called for the resignations of all heads of departments, and appointed Ross superintendent of the light department. New heads were appointed in the other departments. In the main, the new mayor created a very favorable impression throughout the city, and, though a representative of organized labor, received the support of the conservative elements of the city, including the local conservative newspaper. The charges and rumors of graft and corruption, particularly in the police department, quieted down.

The most baffling problem facing the

city government is the street railway system, purchased fourteen years ago from Stone and Webster Company, at a price of fifteen million dollars, which it is generally agreed, was exorbitant. For more than two years past the city has made no payment upon the principal, having secured a moratorium, though keeping up the interest payments. The declining revenues of the system are such now that a crisis is faced on each date when payment to Stone and Webster falls due, for it becomes necessary to pay the employees with warrants. These warrants in former years were taken up by the banks, but the condition of the railway system is now so precarious that the banks have refused to continue this policy. In the midst of the campaign just finished the city was threatened with a street railway strike, owing to the fact that the employees were being paid in warrants which they could not cash except at a heavy discount. The strike was averted only by the principal merchants and business men coming to the rescue of the system and offering to cash the warrants for the time being.

ORCHESTRA LEADER CALLS FOR HARMONY

The "personality" candidate in the race was Vic Meyers, orchestra leader, with the slogan, among others, of "Harmony in the High Chairs." His candidacy was early taken as a joke, and as an advertising stunt, which, indeed, it was. One of the leading newspapers, deciding to poke fun at the primary election, hatched up his candidacy and gave him front page publicity in a vein of humor day after day.

Meyers' campaign was a burlesque. One of his opponents (John F. Dore, who was elected mayor) promised, if elected, that he would put two men on the street cars in the place of one as at present—this in addition to a platform of economy. Vic responded that Johnny Dore beat him to the plank to put two men on the cars, but he countered with a promise to add a third person—a hostess—to each car as a means of making them more popular. This stunt was good for a great deal of publicity, cartoons, and amusement. He next suggested that cracked ice should be served on the owl cars. Each day saw some new humorous plank in the Meyers' platform such as: That the name of the city and department painted on city automobiles should be taken off so that the employees could enjoy themselves more when they go out riding on Sundays; that the best poker players in the fire department should be delegated to poker duty, with the city financing the game and taking a part of the profits; that the traffic policemen should be dressed up in elaborate uniforms; etc.

Vic had a solution for every problem of the city. There has been a great deal of criticism of the street and sewers department, and here is Vic's solution:

> Of course, the psychology is all wrong to begin with. Undertakers have become morticians, plumbers are sanitary engineers, press agents are public relations counsellors, but street sweepers are still street sweepers. Now I propose, if elected to office, to call street sweepers "valet de rue," which is French for domestics of the street, which sounds elegant.
>
> The Seattle department has not kept pace with the improvements in technique. We still use the one-two-three system, which is, (1) bend down, (2) scoop out and away from the body, and (3) swing to the barrow. For five years the rest of the country has been using the new double spinner, invented by a Princeton quarterback who couldn't make a go of it in the bond game.
>
> And just ask a Seattle sweeper to show you a back hand flip. They'll stare at you in amazement, and yet this stroke was known to the Phoenicians.

Of the traffic problem Vic said: "Some of the people can park some-

where all of the time; all of the people can park somewhere some of the time; but all of the people cannot park everywhere all of the time." From first to last he was a wet candidate, stating that he thought a little saloon could be made to pay. Toward the close of the election he rivaled William Hale Thompson's circus in the last Chicago election when he paraded through the downtown district of the city with an old beer wagon loaded with empty kegs, bearing large slogans: "The Town Needs a Tonic—Watch Her Click with Vic"; "Meyers—the Sax Appeal Candidate"; "Cheer Up, Good Times are Coming," etc. On the beer kegs were seated his orchestra, playing, "Ach, du Lieber, Augustine," "How Dry I am," and other similar tunes. Another publicity stunt which Vic pulled was to appear at a Shrine luncheon dressed as Mahatma Gandhi, accompanied by a goat, carrots, *et al.*

VIC POLLS LESS THAN 5% OF VOTES

Toward the end of the campaign Vic gave an account of his campaigning activities as follows:

> In the last three weeks I've been shaved in every barber shop in town (a schedule which required from two to four shaves a day), and I have had my shoes shined to an unbelievable degree of brilliancy by all the town's better known bootblacks. My wife now divides our laundry sixteen ways so that no laundry will feel slighted and advise its employees that a vote for Meyers is a vote for chaos.
>
> Beginning next Monday, the final week of the campaign, I will kiss babies between ten and twelve o'clock. I will meet older children in the afternoon between two and four o'clock and say to their fathers and mothers: "My, what fine looking children! I can see they take after you."

Mrs. Meyers gave birth to a fine son during the campaign, and Vic was pictured in various poses holding the baby. Laura La Plante arrived for an engagement at one of the local theaters, and was promptly installed as campaign manager, but alas, less than 5,000 voters out of more than 100,000 cast their ballots for Vic.

DORE A MASTER DEMAGOGUE

John F. Dore, a leading criminal attorney, against whom disbarment proceedings had been brought by the bar association, proved to be the sensation of the campaign, aside from the Meyers burlesque. He attacked his two principal opponents, Edwards and Harlin, with vitriolic charges. Of Edwards, former mayor, he said, "There never was a greater thief in the city hall. Why, he would steal everything that was not screwed down." Of Harlin, the present mayor, he intimated in very direct language that he had sold out a labor union and had stolen the funds, and had later gone through bankruptcy. He made a great issue of the fact that Harlin was not a taxpayer, as required by the city charter for the office of mayor. Harlin countered with the statement that he was a taxpayer and produced an opinion from a leading firm of attorneys to that effect. Dore replied, "Look at your tax receipts. If you are a taxpayer you don't need to get an opinion from a lawyer."

Dore's campaign was a masterpiece of popular appeal, and elicited tremendous enthusiasm throughout the city. Monster mass meetings were held in various sections of the city, at which thousands of persons were turned away. As all the rest of the candidates, he stood for tax reductions and lower cost of government. He stated on numerous occasions that the per capita taxes of Seattle were $125 annually, and that the owner of a five-room bungalow was paying $250 annually for taxes, which required the head of the family to work for two months to pay for the privilege of living

in his house. The actual per capita cost of city government in Seattle for the current year will be about $27.50, while the cost of county, state, school district and the port district will be about the same amount, perhaps slightly more.

WHERE DORE WOULD SAVE

How did Dore propose to reduce taxes? By reducing salaries of public employees and by reducing city activities? No; by reducing the salaries of employees who were paid more than $250 a month, particularly the heads of the departments. The waste and graft in the city hall were, he asserted, breaking the backs of the taxpayers and causing hundreds of homes to be sold. He proposed to put a stop to it. He did not cite long statistics to prove it, but told of striking cases. The mayor has a fund for secret investigations, totaling $500 a month. This he proposed to abolish. He said that it is supposed to be used for checking up on street car conductors, but not a one had ever been caught even stealing a transfer, much less a token. The former mayor (now a candidate against him) spent $14,000 for "Hollywood" furniture to equip the office of mayor. "Why even the spittoon cost $75," said Mr. Dore, "and is so big that a man would have to be blind to ever miss it. They even have lace curtains on the windows. If I stayed in there long I would be wearing silk underwear. Why, I couldn't work in those surroundings. All I want is a plain table and a chair. They tell me it is harder to get in to see King Bobby (Mayor Harlin) than it is to see King George. Why, you have to have a card and send it in before you can see him. When I go into the mayor's office I will have the door taken off the hinges, so that anyone can come in to see me. I'll be the only 'Dore' around the place."

Dore's showmanship was never better exhibited than when stated that he would offer Stone and Webster one million dollars for the street railway system (the city now owes about $8,000,000 on it), and if they would not accept that figure he would throw it into bankruptcy and buy it back as junk for $25,000. He said that no one else could buy it for they would not have a franchise to operate on the city streets.

Dore won the primary election, polling about twice as many votes as his nearest competitor, Robert Harlin, and won the final election by a vote of 72,448 to 41,212 for his opponent.

The campaigns of the other candidates were quite ordinary. Harlin ran on a safe and sane platform—"A safe pilot in a troubled sea." He had the support of labor and the conservative interests of the city, but was snowed under by the wild enthusiasm for Dore. Edwards ran on a single plank that he would remove J. D. Ross, and was not vindicated. "Doc" Brown, former mayor, withdrew before the primary, sensing that his candidacy was not receiving support. Dore was running away with the group of voters who had supported Dr. Brown when he was formerly elected mayor.

Following the election Dore promised a thorough shake-up of the city hall, and brought suit to oust Mayor Harlin. The term does not expire until early in June, but the charter is not definite upon the point as to whether a person appointed to fill a vacancy shall serve out the term or shall merely serve until the next election. For a week after the election Dore commanded the front page of the local papers by the plans for his administration, particularly his promise to abolish the detective division and return the men assigned to it back to patrol duty.

The Controversy Over Federal Unemployment Relief

ALTHOUGH the senate defeated the LaFollette-Costigan bill, the question of federal aid for unemployment relief is far from settled

BY BENSON Y. LANDIS[1] *New York City*

EVER since the serious drought of 1930 there has been discussion in congress and among public groups of federal aid for relief. In the Fall of 1930 the main issue was in regard to a grant by the federal government to the American Red Cross for drought relief. There were leaders in congress, however, who wished that the appropriation proposed for the Red Cross be used also for unemployment relief in the cities. The American Red Cross stated it would not accept the grant on the terms proposed. It did not say that it would accept no grant but simply that the terms of the bill in congress at that time were not acceptable.

Within the last six months, as the relief burden of states, counties and municipalities has been increasing there has been renewed agitation for federal action on unemployment relief. The bill which seems to have drawn most attention was that introduced jointly by Senators Costigan of Colorado and LaFollette of Wisconsin, S. 3045. Hearings were held on the proposals of Senators Costigan and LaFollette between December 28, 1931 and January 9, 1932. At that time there were separate bills, S. 174 and S. 262, later merged by Senators Costigan and LaFollette. A companion bill was also introduced in the house. When this bill came to a vote recently in the senate it was defeated, but federal relief is still a live issue and by the time this article appears in print there may be other proposals before congress.

[1] Mr. Landis is secretary of the Steering Committee of the Social Work Conference on Federal Action.

THE LAFOLLETTE-COSTIGAN BILL

In view of the public discussion of the LaFollette-Costigan bill, its provisions should be briefly reviewed. Its objective was: "To provide for cooperation by the federal government with the several states in relieving hardship and suffering caused by unemployment, and for other purposes." The bill did not provide for "direct relief" although numerous newspaper editorials evidently written by persons who had never seen it have described it as a "dole" or as contemplating direct grants by the federal government to individuals. An appropriation of $375,000,000, to be available for two years, of which $125,000,000 was to be available for the fiscal year ending June 30, 1932, was to be administered by a federal emergency relief board. This board was to consist of two persons appointed by the president of the United States, the chief of the children's bureau, the director of agri-

cultural extension work, and the chief of the federal vocational rehabilitation service. A unique feature of this bill was that only 40 per cent of the total amount was to be allocated to the states in proportion to population. Sixty per cent might be allocated at the discretion of the emergency relief board on the basis of need.

It was further specified that the legislature or the governor of the state desiring aid must make application for its allocation and designate the state agency which would coöperate with the board. When the state made application for relief it must give an estimate of its relief needs and of available resources within the state; it must make known the provision for administrative personnel who would carry on the relief activities; it must specify the plans of local administration; it must give assurance that assistance would be given to those in need irrespective of the time of their residence within the state.

The hearings on the LaFollette-Costigan proposals contain considerable testimony from social workers, business leaders, governors, and mayors and from Walter S. Gifford, director of the President's Organization on Unemployment Relief.

As is usual in situations like the one through which the country is now passing, the testimony as to what should be done in the situation is conflicting. Different persons appeal to the same set of facts and arrive at opposite conclusions. Furthermore, it must be admitted that the social data available to which one may appeal are as yet very inadequate. It may be of use to review here the pros and cons of federal relief and to indicate briefly what information is available.

PROS AND CONS OF FEDERAL RELIEF

Walter S. Gifford recently issued a press release which indicated his opinion that if four or five legislatures would act, the states and localities would care for their own this winter. He feared that state and local responsibilities would be lessened if a federal appropriation were made.

Another argument against federal aid is that when once it is granted for any group, it is difficult or impossible to withdraw it. There is fear of duplicating European experience. Some hold that a federal fund would be misused because of political interference. There are those who contend that because the government must borrow heavily in order to meet its deficit it should not be forced to borrow additional funds for relief. Again it is held that "there is no evidence that existing resources are insufficient to prevent actual starvation."

Those who favor federal relief are saying that national action has previously been taken in cases of disaster not so widespread; that the federal government is giving relief to banks and large railroads and industrial enterprises and should also do something for the unemployed; that federal relief can be so given as to stimulate rather than discourage local effort, as has been true in cases of state aid; that the near bankruptcy of many municipalities is notorious, and it is known that some states are unable to make relief appropriations either because of financial conditions or constitutional limitations.

Under such circumstances, those who advocate federal assistance should not have the entire burden of proving that no miracle will happen which would obviate the need for federal assistance. Those who oppose such assistance have a certain burden of proof that existing state programs will prove reasonably adequate. Otherwise, if the mere prevention of starvation has become the American goal, the only convincing

evidence of the need for federal action would be widespread starvation and the actual financial breakdown of state and local governments.

With regard to the social data available, it must first be noted that the President's Organization on Unemployment Relief has gathered no comprehensive information on relief needs and that it has made little of its information public. Nevertheless, some useful data are available, even though the judgments of social workers and others close to the situation vary widely as to their value.

SOME DATA AS TO NEED

The department of statistics of the Russell Sage Foundation has been compiling expenditures for family relief from nearly all of the relief organizations of 81 cities in the United States. It has made monthly reports over a period of three years. (This reporting service is now being maintained by the children's bureau at Washington.) The bulletin giving statistics for December, 1931, which is the latest one available, says that expenditures for family relief were much greater in that month than in any previous month of the current depression. More than $20,500,000 in outright and wage relief was distributed by 523 agencies in the 81 cities reported. Comparing the month of December, 1931 with December, 1930 we find an increase of 75 per cent in total relief for 1931. It is significant to note that public departments in December administered 62 per cent of the total relief reported, as contrasted with 75 per cent in October, 1931 and 70 per cent in November, 1931. Very large increases in private emergency relief in two cities, Chicago and New York, are mainly responsible for these figures. Work relief projects were reported in operation in 34 of the 81 cities in December.

The total relief given in 1931 was nearly four times that of the year 1929. It is the testimony of many social workers that relief needs have been "pyramiding" during the entire course of the depression. There is at the present moment competent testimony that the pyramiding process is still going on.

Although much publicity has been given to the relief needs being met by community chest drives, competent testimony from chest executives indicates that the proportion of chest money going for unemployment relief varies between 10 and 35 per cent of the total money collected, the remainder going to other forms of social work. It has been estimated that in ordinary times 10 per cent of chest budgets go for relief purposes. In the present emergency it is thought that perhaps as much as one-third or 35 per cent is being used for relief.

In the year 1929, practically 100 per cent of the relief was outright, or direct, or home relief. By 1930 wage or work relief came into the picture and amounts for work relief increased during 1931.

CAN LOCAL GOVERNMENTS CARRY THE BURDEN?

Because public and not voluntary agencies are meeting the main relief burdens one of the main issues of the controversy is whether local governments should or can continue to add to real estate taxes, their main source of revenue, in order to pay for increasing relief burdens. Apparently a considerable number of local governments are in financial difficulty; or at least cannot meet maturing obligations; or cannot borrow money with banking conditions as they are at present.

The part which the state should play in supplementing county, city, village and town resources has also been a mat-

ter of much controversy. Apparently only two states, New York and Wisconsin, have appropriated any considerable sums of money for relief purposes. Both of these states have a successful experience in raising funds through income taxes. Twenty states have already imposed an income tax, according to a recent memorandum by Carl A. Heisterman of the federal children's bureau. Since that memorandum was prepared, Illinois has enacted a new law and possibly other states have taken action which has not come to my attention.

SOME NEED OUTSIDE HELP

It seems evident that, although most persons agree that relief is first of all the responsibility of the locality, secondly that of the state, and third, that of the nation, there are in a majority of the states some localities which need assistance from beyond their borders. The American Association of Public Welfare Officials recently made available to the Steering Committee of the Social Work Conference on Federal Action information in regard to the diverse conditions obtaining in the various states. Sixteen states apparently presented few problems or were not calling for assistance from beyond their borders. In five states dependent transients were the main problem. In five other states the population in the mining areas presented the most serious conditions. Two state governments were reported as having very serious fiscal problems and as being unable to borrow money. The other states, for the most part, had some localities that needed help.

The Steering Committee of the Social Work Conference on Federal Action has issued a report available postpaid through the office of the secretary, Benson Y. Landis, 105 East 22nd Street, New York. On that steering committee were 14 persons identified with national social work agencies. The committee declared in favor of federal aid for unemployment relief in the present emergency, adding that the temporary nature of federal relief should be recognized. One of the conclusions is the startling one that standards of relief giving have fallen progressively lower in nearly all communities during the last few years and are reaching a point in many communities where even a decent minimum of family health and well-being is no longer assured. The majority of the committee favored immediate federal appropriations for both public works and for home relief. A minority felt that only a public works program was needed and that federal grants for home relief were not as yet necessary.

It was stated that road building was the only extensive form of public work that can be immediately expanded. This is because state governments all have roads planned for several years in advance, and await only the necessary funds. But the indications are that the states will actually spend less money for road building during 1932 than they did during 1931 because they do not have the resources. Therefore an emergency federal appropriation for road-building was favored, in order to maintain and increase employment, but with the proviso that federal highway regulations in regard to the "matching" of money be relaxed during the emergency. An increase in federal building was also favored.

At this writing the House of Representatives has passed a bill appropriating $132,000,000 for road building. It is also stated that Senator Wagner of New York will introduce a new comprehensive federal relief bill making grants to the states which will provide for their repayment over a period of years.

Regarding the Indiana Tax Plan—a Reply to "Observer"

BECAUSE it spells economy Indiana likes the Indiana Plan

BY PHILIP ZOERCHER *Indiana State Board of Tax Commissioners*

IN the February issue of the NATIONAL MUNICIPAL REVIEW there appeared an article under the title, "Has the Indiana Plan Been a Success?" The author of it was not known to the public.[1] The article is so unfair to the actual facts that, with the editor's permission, I submit the following:

When the legislature of the state of Indiana convened in January, 1919, the State Board of Tax Commissioners submitted a draft of a bill to that legislature. A special commission had been appointed by Governor Ralston, and this commission in making its report showed that property was very unequally assessed in the state of Indiana, real estate in some counties being assessed as high as eighty per cent and in others as low as twenty per cent. The bill submitted to the legislature was a re-enactment of the old law of 1891, adding such amendments as had been suggested by the special commission and the previous state administration. It was known that if an honest effort were made to assess property at its full true cash value, something would have to be done to check expenditures. Governor Marshall in his last message to the legislature before he entered upon his duties as vice-president said:

> I recommend further that no bonds shall be issued until application made to the state board of tax commissioners asking for leave to issue the bonds and showing the purpose of the issue is granted; and that the board grant no leave until it has fixed the minimum price at which the bonds may be sold.

The provisions in the law provided that all tax levies where the amount exceeded $1.50 were subject to review by this board, and all bond issues were subject to review by this board. As the result of this authority the first year reduction was made in taxes of $11,617,037. Before the fixing of the next tax levies a special session had been convened, and the authority over tax levies was taken away and lodged with the county board of review on appeal of twenty or more taxpayers. Authority over bond issues was continued until January 1, 1921. As the county council[2] is the body that fixes the local levy, it seemed that it was not the proper body to review its own action. The taxes were increased that year $36,000,000. This cost of home rule was so vividly impressed upon the taxpayers that the legislature of 1921 amended the law and gave the

[1] For reasons sufficient to the editor the author's wish to remain anonymous was respected.

[2] A separate body from the county board.

tax board authority over bond issues in excess of $5000 and all tax levies on petition of ten or more taxpayers.

NO AUTHORITY TO FIX SALARIES

Mr. "Observer" criticized this board for not making reductions in salaries. The legislature has placed the fixing of salaries on other bodies, and it would be presumptuous on the part of the state tax board to take upon itself the authority to reduce salaries. The supreme court of this state has repeatedly held that the tax board has only such authority as is set out in the statute. It does not give this board authority to fix salaries. A remedy for that is elsewhere and not with this board. We have tried to carry out the spirit of the law, but our activity was limited by the terms of the statute. The actual reduction in bond issues and tax levies since 1919 has been in round numbers $73,000,000. That is the direct result. The indirect result would more than equal that amount.

EXAMPLES OF ECONOMIES ORDERED

In the year 1930 the school city of Jeffersonville contemplated a bond issue for $155,000 for building a new school house. Ten or more taxpayers filed a petition which brought the matter before our board. A hearing was had and the finding was that the school house was necessary. A preliminary order was made directing the school city to advertise and receive bids and make report thereof. Contractors in the state of Indiana have learned that in cases of this kind they are not required to see any persons of influence but if they file the proper bond and show a proper financial statement, and if their bid is low, they will be awarded the contract or the bond issue will be denied. In this particular case the local school officers wanted to let the contract to a local bidder whose bid was $12,000 more than the low bidder. The low bidder was from Batesville, Indiana, and a man who had erected many buildings in the state. Pressure was attempted, requesting the board to approve bonds for an amount which would have permitted the local board to let the contract to the high bidder. The board refused to pay any attention to these outside influences, as it has consistently done during its entire career. The building was erected, and is satisfactory to everybody, with a saving of $12,000 to the taxpayers and bonds were approved in the sum of $107,000.

In Marion County several years ago the Taxpayers' Association filed an objection against several bond issues. After investigation and a hearing the state board of tax commissioners made a preliminary order. When the bids were received one of the county commissioners admitted that if bringing the matter before the state tax board would bring such an array of bidders, he hoped every bond issue would be submitted to our board. The saving in those roads at that time amounted to over fifteen per cent. The following year four county unit roads were proposed, and a bond issue of $712,000 was asked for. Petitions were filed in all those cases, and after the bids were received the bond issue was approved in the sum of $495,000; in other words, a saving of $217,000.

On March 28, on petition of taxpayers, a hearing was held in the city of Evansville on the building of two roads under the three mile road law in the city of Evansville. The plan was to build the roads under the three mile road law, requiring taxpayers in the entire township to pave these streets in the city of Evansville. Vanderburgh County has a very competent

highway superintendent, one who has done most excellent work on the county highways, and the board is confident that the work can be done at a greatly reduced cost to the taxpayers by the city and the county council working together.

THE LAW IS CONSTITUTIONAL

The question of home rule cannot apply to the question of taxation. That was fully decided by the Supreme Court of Indiana in the case of *Zoercher* v. *Alger*, reported in 172 N. E. 186. That was a case where an appeal was taken by ten or more taxpayers in the city of South Bend, asking a review of the civil city levy and reduction in the levy was made of one cent. The lower court held the law unconstitutional. The case was appealed to the supreme court, and we quote the following from the court's opinion:

> It is unnecessary here to enter upon a discussion of the existence of the right of self-government in cities, or to determine just what such phrase includes. It cannot include the right of taxation, because that, by section 1, art. 10, Const. section 200 Burns' Ann. St. 1926, is vested in the general assembly. The power of taxation is in the state which occupies the position of universal trustee for all its municipal subdivisions. Cities get their authority to levy taxes only from a grant thereof by the state legislature.
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> * * *
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> The legislature has granted to cities the power of taxation and has enacted many laws regulating taxation. These grants are naturally subject to revocation, modification, and control by the legislature. . . . The legislature has delegated the power to make levies to the governing bodies of the municipalities and has established the state board of tax commissioners as a reviewing body, to serve as a check upon the local municipal authorities, giving such board power to affirm or decrease levies in order to keep them within the limits which it has prescribed. There is no constitutional objection to the legislature thus providing for the carrying out and enforcing of its expressly enacted will. Boards or individuals occupying no legislative position may be delegated duties in regard to taxation which are advisory or ministerial in their nature.

INDIANA APPROVES

The records in the office of the state board of tax commissioners speak for themselves. These records show that the taxpayers in every county in the state have at some time or other taken advantage of the rights given them under the statute of appealing bond issues and tax levies to the board. In spite of what Mr. "Observer" or anyone else may say, taxpayers in this state have been jealous of their rights, and each succeeding legislature since 1921 has strengthened the law rather than taken steps toward repealing it. There is no greater problem before the American people today than the question of taxation, and that has resolved itself into a question of how much money should be spent by public officials. If one hundred cents of value is given in return for every dollar paid, there cannot be so much complaint, but where there is extravagance and corruption, and the taxpayer has no remedy, those are conditions that we have tried to obviate by the passage of the Indiana plan. It may not have accomplished everything, but has accomplished much more than anything we have ever had in the state. Mr. "Observer," himself, knew that and felt that way. If he did not he would have been man enough to sign the article and let everyone know who the author was.

What Municipal Home Rule Means Today

V. Missouri

IN MISSOURI, home rule means what the courts say it means and no more

BY THOMAS S. BARCLAY

Stanford University

THAT certain cities should enjoy the right to determine their own form of government first found formal recognition and sanction in the Missouri constitution of 1875. The vagueness and uncertainty of the constitutional provisions for municipal home rule therein incorporated, to say nothing of the ambiguous and contradictory declarations concerning state laws and charter provisions, have made extremely difficult the application of the home rule principle. In other words, it was shortly apparent that, although home rule was an appealing catchword, its scope, meaning, and limitations were exceedingly vague.[1]

St. Louis and Kansas City remain the only cities to which home rule is applicable. These municipalities have proceeded, in the first instance, to decide for themselves what powers they may exercise under the constitutional authority conferred with reference to a charter for each city's "own government." During the past fifteen years the questions involved in a possible conflict between state laws and charter provisions of home rule cities have in several important cases been judicially determined. There also have been widely divergent opinions concerning the exercise by cities of powers which, it is alleged, do not pertain to municipal government. An analysis of the various questions in which have been involved conflict or the scope of the city's power will serve to indicate what home rule means today in Missouri.

[1] The applied problems of home rule in Missouri, 1875–1914, have been analyzed with characteristic keenness and cogency by Howard Lee McBain in *The Law and the Practice of Municipal Home Rule*, pp. 118–200 (New York, 1916).

PROCEDURAL CHANGES FOR HOME RULE CHARTERS

Under the terms of a constitutional amendment adopted in 1920, the machinery for exercising home rule was altered and brought into conformity with modern conditions. Provision was made for submitting the question of charter revision by initiative as well as by action of the city council; for the nomination by petition and the election of the charter commission on a nonpartisan ballot; for the adoption of the proposed charter by a majority vote rather than by a four-sevenths vote. Finally, the requirement for a mayor and a bicameral legislative body was abolished, thus making possible the adoption of the city manager plan. These changes applied, in effect, only to Kansas City, as St. Louis operates under separate provisions of substantially the same character. The amendment

was virtually a duplicate of the plan proposed in the model charter of the National Municipal League.

In 1924 a series of proposed amendments to the constitution included a complete recasting of the sections dealing with home rule. The improvements adopted in 1920 were retained but all, or nearly all, of the obsolete and contradictory clauses were eliminated.

Home rule was extended to every city of more than three thousand population; the charter remained subject to the requirement that it must be consistent with the constitution, but, with reference to legislative acts, it was to be consistent only with "general laws of the state relative to matters of general state concern or operation." This change was to eliminate a prolific source of confusion and expensive litigation.[1]

To the general grant of power over municipal affairs was added a specific enumeration of powers that might be exercised by cities. These included taxation, acquisition and maintenance of all public works, and ownership and operation of public utilities. Express recognition was given to the right of a city to control its police department, but in cities of over 70,000 the governor was authorized to remove the commissioner or board although he had no authority to fill any vacancy. Provisions were included for zoning and excess condemnation, while the constitutional strait-jacket which for fifty years has prevented the expansion of St. Louis beyond its fixed limits was so removed as to permit extension by consolidation, by annexation of contiguous territory, or by St. Louis becoming again a part of St. Louis county. Control over elections, public utilities, and city accounts remained subject to legislative regulation. It is indeed unfortunate that these constructive amendments, prepared after careful study by an able committee of the constitutional convention, were rejected by the electorate. Their adoption would have clarified and simplified the law of home rule.

[1] The constitution of 1875 provided that a St. Louis charter "shall always be in harmony with and subject to the Constitution and laws of Missouri," and charters of other home rule cities "consistent with and subject to the Constitution and laws of this State." Art. IX, secs. 16 and 23. The courts were forced to read into these sections the qualification that charter provisions must be consistent only with those laws of general rather than of local concern. Kansas City ex rel. North Park District v. Scarritt (1894) 127 Mo. 642.

PROPOSED AND ADOPTED CHARTERS

St. Louis continues to operate under its charter of 1914, which provides for a strong mayor form of government, combined with a relatively modern administrative organization. There has been practically no discussion of a new fundamental law, the charter being generally satisfactory. The city remains strongly Republican; the general ticket method has resulted in a continued and unsatisfactory one party domination.

In Kansas City there was almost a decade of agitation for a new charter, as the charter of 1908 was hopelessly antiquated. In 1917 a charter providing for the city manager plan, with such unsatisfactory modifications as were then necessary under the state constitution, was defeated. The city electorate rejected, on November 21, 1922, another proposed charter, which provided for a unicameral legislative body, increased power for the mayor, a more centralized administration, and a budget system. The charter was obviously a compromise. Its defeat can be charged to opposition by the political machines, by many who believed

that more drastic improvement was necessary, and by a lack of organized support.

A charter commission pledged to submit a city manager charter was elected on February 26, 1924, and, one year later, after an intensive campaign and supported by a curious alliance of machine politicians and civic leaders, the voters adopted by a large majority a council manager charter. Bicameralism, the partisan long ballot, and the board system of administration were replaced by a single chambered council of nine, one of whom is the mayor, selected on a nonpartisan basis; a city manager who has adequate administrative control; and satisfactory civil service provisions. Despite the nonpartisan ballot, the government under the charter has been intensely partisan. Structural improvements and relatively efficient administration, however, have more than compensated for the failure to achieve nonpartisanship.

LEGISLATURE AND HOME RULE CITIES

The police department of St. Louis and the election machinery of both cities remain under the administrative control of separate state boards. This arrangement has long been regarded with intermittent hostility by many local elements, and movements to "restore home rule" and to provide the "fullest measure of home rule" have been launched both in and out of the legislature.[1] At nearly every session unsuccessful attempts have been made to give the cities control of police administration. In 1914 legislation for St. Louis to this effect was defeated on a state-wide referendum. With an almost perpetual Republican control of St. Louis and with successive Republican governors, many Democrats have lost interest in proposals to secure home rule in police and in elections for that city. It is also recognized that the police department has been unusually free from political influence, with a marked increase in efficiency. Kansas City, however, is preponderantly Democratic and much conflict has occurred between the Democratic city manager and the Republican police board. The factors which will probably prevent the early restoration of local control include the city against the country, the wets against the drys, and the difficulty in securing the proper political coalition in the legislature.

[1] *St. Louis Globe-Democrat*, October 13, 1921, January 5, 1922.

RECENT JUDICIAL INTERPRETATION OF HOME RULE PROVISIONS

From the beginning, the practice of home rule in Missouri has been made exceedingly difficult because of the confused ambiguity of the law. The actual powers possessed by municipalities under the constitutional grant have never been certain. It is necessary, therefore, continually to seek judicial assistance in order to determine the extent of the city's powers and to adjust questions of conflict between state laws and home rule charters. In an era of ever-widening functions of government the competence of the city to exercise this or that power has been frequently questioned. A brief examination of some of the more significant decisions may serve to indicate where the cities stand. These cases involve chiefly the fields of taxation, public utilities, zoning, police department, police power, and streets and sewers.

(1) *Taxation.* In this important field the court has reaffirmed its earlier doctrine, to the effect that charter provisions and ordinances passed in pursuance thereof, relating to taxation, must be consistent with and subject to the state laws of general application

concerning this subject.[1] Apparently, no charter provision can supersede a general state law on the subject of taxation and it certainly cannot conflict with it. Nor can a city make additions to the classes created by general state laws for tax purposes.

The court has continued its practice of restraining municipal tax proposals which, without conflicting with state law, are experimental in character, although upholding license or merchants' taxes on the sale of cigarettes and of gasoline.[2] In upholding taxes for special purposes in St. Louis, authorized by the legislature, the court declared that a home rule city can exercise only those powers incident to municipal government and that in other tax matters it was subject to the same legislative control as cities organized under general laws.[3]

(2) *Public Utilities.* In 1913 a state law created a public service commission, conferring upon that body jurisdiction of the service, rates, and securities of various privately owned public utilities, including street railways. The St. Louis charter of 1914 vested in the board of aldermen regulatory power, including the fixing of rates, over local public service corporations. The law and the charter were in direct conflict, and the validity of the latter was shortly assailed. It was held that the control and management of public utilities were not matters of municipal concern, and that the charter provisions "constituted an unwarranted invasion of a province clearly within the purview of the state" and were thus "inoperative and of no effect." [4]

During the period of rising costs the state commission has authorized on several occasions the increase of fares of street railways. Despite the fact that the fares had been fixed in the franchises between the home rule cities and the respective utility companies, judicial declaration was to the effect that the state, through its agent the commission, could prescribe different fares. Reasonable rates, as determined by the state authority, displace those permitted by the city, even though the latter charges were made the condition upon which the franchise was granted.[5] In discussing the validity of a St. Louis ordinance which made it an offense to sell or give away a street car transfer, the court declared that entirely regardless of any conflict, the city had invaded the province of the state and was "without the power to regulate to any extent, directly or indirectly, the rates of a public utility or to prescribe regulations or practices which affect such rates." [6]

Any lingering doubt concerning the power of home rule cities to regulate rates or effectively to control operations of utilities was dispelled in 1930. In pursuance of a state enabling act, authorizing cities of certain population to enter into service at cost agreements with common carriers, the council of Kansas City had granted a street railway franchise. The company agreed that the schedule of fares therein provided "shall and will be sufficiently compensatory and constitute a fair and just return to the owner on said property." Subsequently, the company

[1] State ex rel. International Shoe Co. v. Chapman (1925) 311 Mo. 1.; see also Siemens v. Shreeve (1927) 317 Mo. 736.

[2] Ex parte Asotsky (1928) 319 Mo. 810; Automobile Gasoline Co. v. City of St. Louis (1931) 32 S. W. (2d) 281.

[3] State ex rel. Carpenter v. City of St. Louis, State ex rel. Zoölogical Board of Control v. City of St. Louis (1928) 318 Mo. 870 and 910.

[4] State ex rel. United Railways Company v. Public Service Commission (1916) 270 Mo. 429.

[5] City of St. Louis v. Public Service Commission, City of Kansas City v. Public Service Commission (1918) 276 Mo. 509 and 539.

[6] Ex parte Packman (1927) 317 Mo. 732.

petitioned the public service commission for increased fares, and the city immediately contended that the express contract provisions in the franchise prevented the commission from proceeding further in the matter. The opinion of the court, however, held that the function of rate regulation remained exclusively with the state commission, despite the enabling act, and that fixing of rates was an exercise of the police power of the state which could not be abridged by law or by the terms of a franchise granted by municipal authority.[1]

The competence of home rule cities to control public utilities, under the general constitutional authority to frame a charter, is thus greatly restricted. Only the repeal of the law creating the commission can divest it of any part of its jurisdiction, and even then it would be exceedingly doubtful whether the cities could exercise authority in a matter of so-called state or general concern, whether or not there was any conflict.

(3) *Police Administration.* It has already been indicated that state administrative control over the police has long existed in the home rule cities of Missouri, despite relatively numerous efforts to restore to them this important function. During the past decade the court on several occasions has strongly reaffirmed its earlier opinions that the control of police was a matter of state and not of municipal concern.

The St. Louis authorities have grudgingly acquiesced in this doctrine but political, fiscal, and other factors have combined to produce in Kansas City strong resentment against state control. There is justifiable opposition of a legal and political character to state laws which provide in detail for the organization and procedure of what is essentially a department of municipal government. The attempt of the city authorities to levy what was in fact a special state tax for the support and maintenance of the Kansas City police department was voided by the court.[2] The municipality has been declared to be an agent of the state, charged with the financial maintenance from the city's revenues of the police department even though it is a state institution.[3]

A state law requiring the corporate authorities to appropriate such funds as are requested by the police board was recently upheld by the court, after a prolonged controversy between the Democratic city manager of Kansas City and the Republican board over the police appropriations and expenditures for 1929–30.[4] That home rule cities would be permitted to exercise what is often designated as "real home rule" in police affairs seemed exceedingly doubtful. On March 15, 1932, however, the court by a divided vote held unconstitutional the statute which established state control of the police department in Kansas City.[5] The decision was the result of a suit which arose when the Kansas City council refused to appropriate the funds requisitioned by the police board for 1931–32.[6] The court declared that the act applying to Kansas City was a delegation to an administrative agency, the police board, of the taxing power, "in violation of the organic law."[7]

[1] State ex rel. Kansas City Public Service Company v. Latshaw (1930) 30 S. W. (2d) 105.

[2] Strother v. Kansas City (1920) 283 Mo. 283.

[3] American Fire Alarm Co. v. Board of Police Commissioners (1920) 285 Mo. 581.

[4] State ex rel. Beach v. Beach (1930) 28 S. W. (2d) 105.

[5] State ex rel. Field vs. Smith (1932).

[6] See Revised Stats. Mo. secs. 7501–7535 (1929).

[7] In the earlier cases the constitutional question as to the delegation of legislative power was not raised or considered.

Under the act the court maintained that the board might demand the entire revenues of the city and "by force of the statute, the custodian of Kansas City's revenues must stand and deliver." The city authorities immediately proceeded to administer the department under the terms of the city charter.

The decision does not question the right of the state to provide for state control and to require the cities to pay the expenses of police departments; it voids the specific statute under consideration. Apparently, a statute for Kansas City reëstablishing state control, if it conformed to the constitutional requirements, would be upheld. It was specifically stated that the validity of the law relating to St. Louis, which is somewhat different, was not affected.[1] From the political point of view, the decision may have far-reaching consequences. It restores control of the police, at least temporarily, to a strong Democratic machine, and to its leader, Thomas J. Pendergast, already in absolute control of every other phase of the city government.

(4) *Police Power.* The right of cities under home rule charters to enact ordinances of a police power nature is rarely questioned. It is part of the power conferred by the constitution under the grant of home rule.[2] In Missouri the same principle is applied in case of conflict between state police laws and city police ordinances enacted under home rule as is applied in a conflict between such laws and the police ordinances of a legislative charter city. A city cannot, however, expressly forbid what the legislature has expressly authorized, it cannot make unlawful what the general statute has declared is lawful, and it cannot prohibit a business which the statute permits.[3]

(5) *Zoning.* The very apparent necessity for adequate zoning for St. Louis was met by a comprehensive ordinance passed in 1918. This ordinance was declared unconstitutional by the court, but it is difficult concisely to indicate just what was the exact basis for the involved decisions in three quite similar cases.[4] The charter provisions, referring only to specified nuisances and to occupations dangerous or detrimental to the public health, were not comprehensive enough to include restrictions in the form of "use" and "height" districts. In other words, the well-known rule of strict construction of the terms of the charter was applied. In consequence of these decisions, a chaotic period of speculative building resulted, with great damage to many neighborhoods and districts.

In 1925 the legislature passed a zoning-enabling act. This carefully prepared statute authorized zoning under the police power and was intended primarily to apply to the home rule charter cities. Ordinances based upon the act were subsequently upheld by a bare majority of the court.[5] It would seem, therefore, that the legality of zoning as a proper exercise of the police power is now established.

(6) *Streets and Sewers.* Municipal ordinances concerning the construction

[1] It is quite possible, however, that the municipal authorities of St. Louis will soon test the validity of the law relative to that city. See Revised Stats. Mo. secs. 7540–7564 (1929).

[2] State ex rel. Vogt v. Reynolds (1922) 295 Mo. 375.

[3] State ex rel. Knese v. Kinsey (1926) 314 Mo. 80.

[4] State ex rel. Penrose Investment Co. v. McKelvey; State ex rel. Better Built Homes and Mortgage Co. v. McKelvey; St. Louis v. Evraiff (1923) 301 Mo. 1, 130, 231.

[5] State ex rel. Oliver Cadillac Co. v. Christopher (1927) 317 Mo. 1179; State ex rel. Nigro v. Kansas City (1930) 27 S. W. (2d) 1030.

of sewers, drains, levees, and providing for special sewer tax bills have been upheld as against state laws on these subjects. The court ruled that as the former pertained to matters of "peculiar, essential, and elementary local municipal concern" they prevailed in case of conflict with state statutes.[1] Charter procedure relating to condemnation of property likewise supersedes a state law, regardless of the order of their passage.[2]

(7) *Annexation of Territory.* The present limits of St. Louis were fixed in 1876 when the city was separated from the county, with no provision for future annexation of territory. After considerable agitation, an amendment to the constitution was passed in 1924 which authorized a joint board of freeholders to draft and submit to the voters of the city and of the county one of three alternative plans enabling St. Louis to extend its boundaries. The county electorate subsequently rejected the consolidation scheme which was proposed. After long discussion and investigation by various civic leaders and experts in both jurisdictions, the plan of a federated city for the region seemed the most practicable. It was necessary first to secure the adoption of a long and complicated amendment authorizing the drafting of a charter for the city of Greater St. Louis, to become effective when adopted by a majority vote in both city and county. Although this proposal carried the city of St. Louis it was defeated elsewhere by a large majority. Despite the many unsatisfactory and anomalous features of the present situation, it does not seem possible that the city will soon escape, as a legal and political entity, the status of a mediaeval walled town. Fortunately, Kansas City is not in a similar situation.

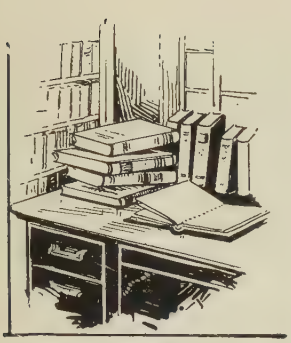
[1] In re East Bottoms Drainage District (1924) 305 Mo. 577; Bates v. Comstock Realty Co. (1924) 306 Mo. 312.

[2] State ex rel. Kansas City v. Lucas (1927) 317 Mo. 255.

CONCLUSION

The principle of home rule is firmly fixed in the public law of Missouri, despite certain unsatisfactory features of the practice. The legislature has indicated no hostile disposition to interfere with home rule by consciously restricting the powers of home rule cities; the attitude has been largely one of indifference. The fact that St. Louis and Kansas City by judicial determination have each been held to be in "special" constitutional classes has permitted legislation directly for them, but this power has rarely been abused.

Because of the well meaning but very vague terms of the grant of constitutional home rule, the court will be continuously burdened with the task of defining and limiting the application. The attitude of the court thus becomes much more important than the attitude of the legislature. Judicial solution of the complicated problems has left much to be desired, especially in the fields of police administration and of public utility regulation where great dissatisfaction with existing conditions is evinced by the respective cities. It would, however, be hazardous to predict any general reversal of well established legal doctrines which seem now to have passed into settled usage.



RECENT BOOKS REVIEWED

Cases on Municipal Corporations. By Charles W. Tooke. Chicago: Commerce Clearing House, Inc. 1931 Edition. v, 896 pp. $6.50.

A review of a new edition of a well-known case book can be little more than a comparison of the two books. It is so long since the publication of any other case books on this subject that reference to them is unnecessary. It is a striking proof of the rapid developments in this field that a new edition should be needed only some five or six years after the first edition. Of course, the zoning cases come first to mind; the first of the comprehensive zoning cases in the United States Supreme Court was decided in 1926. The author's preface shows similar expansion in some other aspects of the subject. These changes are reflected in the new cases reported. A comparison of some of the chapters is revealing. In the first four chapters, which deal mostly with the more formal aspects of the subject such as creation and relation to other parts of the state government and to the national government, there are only five new cases, *i.e.*, cases which were not reported anywhere in the former edition. On the other hand, the following four chapters on powers (covering not very many more pages than the first four chapters) contain thirty-six new cases. There are none in Chapter X on municipal indebtedness and only one in Chapter XI on liability in quasi contract. However, there are ten in Chapter XIII on tort liability. The "new cases" referred to are not all of recent date, but most of them are. Furthermore, there is a good deal of rearrangement of the cases within chapters and from one chapter to another. Also, some of the old chapters are combined, and the old chapter on powers is divided into four new chapters. Lastly, the book has been shortened by the omission of some cases and further editing of others, thus reducing the size of the book over four hundred pages. Even now there is more material than is needed for the time usually allotted to the course. It is apparent that this new edition is not a perfunctory job; it is a real revision.

Some criticisms may be made. There continue to be a few cases where the ultimate disposition of the case is not stated. The citations of material in the legal periodicals are helpful but by no means as complete as would be useful. For example, reference on page 862 to Professor Borchard's excellent essays on "Government Liability in Tort" is only to those in the *Yale Law Journal*, giving the date of the first one without the exact citation of any and without indicating that the series has been continued in the *Columbia Law Review*.

On the whole, however, Professor Tooke has done a thorough and scholarly piece of work. This new edition should stimulate the teaching of this important subject in American universities.

Ralph H. Dwan.
University of Minnesota Law School.

Stabilization of Employment in Philadelphia Through Long-Range Planning of Municipal Improvement Projects. By William N. Loucks, Ph.D. Philadelphia: University of Pennsylvania Press, 1931. 341 pp. $3.50.

Here we have the first thoroughgoing study of the possibility for influencing the stabilization of employment by adjusting programs of municipal works to cycles of unemployment.

Dr. Loucks shows the tremendous increase in annual expenditures for municipal improvements

in Philadelphia during the period 1919 to 1928 and the correspondingly great increase in the bonded debt of the city. He finds that "the apparent tendency for total loan-fund improvements to fluctuate in direct correlation with unemployment during the years 1919 to 1924 was purely accidental, since no such tendency existed from 1925 to 1928. Expenditures and unemployment can be correlated only by planning and controlling expenditures to that end."

He finds that while Philadelphia will not for many years suffer from lack of contemplated improvements, neither the city plan commission or any other agency has yet set up an authentic sequence for carrying out these public works. He seems to feel that in the enthusiasm for bettering municipal facilities, the city's appetite for improvements may have been whetted beyond a desirable and healthy state and that eagerness to get projects started has lead to official authorization of work before adequate appropriations were in view. This in turn has produced the unconscious assumption that the city's ability to finance improvement work is unlimited—an assumption "constantly becoming less and less correct."

In studying the procedure for initiating and carrying on improvements he finds cumbersome red tape and much loss of time, and he proposes quite definite methods of cutting the tape.

The volume includes a carefully prepared program whereby Philadelphia may partially stabilize employment through the long-range planning of its municipal improvement projects, including (1) a comprehensive authoritative plan for improvements; (2) a coördinated plan of finance; (3) the determination of means for preserving a larger margin of borrowing capacity; (4) means of quickly financing projects upon short notice; (5) means to simplify and shorten the procedure in planning, financing, and putting projects under contract; (6) means to shorten the time required for taking title to property needed. Dr. Loucks goes further and outlines nine steps essential to establishing a long-range planning procedure and adjusting that procedure in the cycles of employment.

The author in the course of the text, asks himself this question: "Does the possibility of absorbing, through expanded public works, 10 per cent or 15 per cent of those unemployed during a depression, justify the expenditure of the time and effort necessary for even the partial completion of these suggested changes (in the municipal administrative organization)?" And he gives the following judicious reply. "Probably not, if these modifications were only to make possible successful long-range planning. Fortunately for the long-range planning advocates, however, such developments would be much more far-reaching. Each of the proposals included in the outline (of organization) has other potential advantages which in most cases are so great as to make its significance in relation to long-range planning almost incidental."

This is a corking book all the way through from its explicit table of contents to the bibliography and index, and it should be of great value to every one concerned with unemployment and/or municipal administration. And from the present writer's standpoint, it would seem to mark an epoch in bridging the very difficult gap between the preparation of city plans and the effective, efficient realization of those plans.

Jacob L. Crane.

Full Value Real Estate Assessment as a Prerequisite to State Aid in New York. Special Report of the State Tax Commission, No. 3. By Chester Baldwin Pond, Ph.D. 1931. 189 pp.

This is the third special report submitted as a result of the highly commendable plan adopted in 1928 by the New York State Tax Commission of establishing a limited number of university fellowships for the study of New York tax problems. Dr. Pond was the New York State Fellow in Taxation at Cornell University.

The title of this monograph is a bit misleading, since it is only in the last chapter and in the appendix that the author presents and analyzes the proposal for full value real estate assessment as a prerequisite to state aid in New York. The bulk of the report is really concerned with the operation of conditioned federal aid and conditioned state aid in the United States and conditioned state aid in other countries. This part of the report is a valuable summary, although its extensive character does not permit a thorough and intensive examination of the operation of the principle of state aid. Sufficient evidence and data are presented on the operation of the principle of state aid to prove that it has been a very successful device wherever used.

Having demonstrated the widespread and continued success of the application of state aid, Dr. Pond proceeds to suggest it as a scheme that

might be utilized to bring about full value assessment of real estate in New York, and thus erase in considerable measure the $150,000,000 total annual injustice now being done the taxpayers of the state as a result of the deviation from uniformity under present assessment practices. The scheme would be put into effect by inserting a provision in the tax law of New York stating that no tax district will be eligible for state aid in any form, whether returned taxes or road and school aid, until the tax commission is satisfied that the tax district assesses real estate at full value.

The reviewer believes that the checking of the local assessments presents more serious practical difficulties than the author seems to realize. No legal difficulties that might obstruct the adoption of the plan are apparent. While the scheme departs in important particulars from the principles of state-aid heretofore applied, on the whole it seems like an admirable idea and ought to be given a trial.

MARTIN L. FAUST.

SINGLE FINGER PRINTS. By Harry Battley. New Haven: Yale University Press, 1931. 98 pp. $2.50.

This outline of a new system of filing single finger prints, as used in New Scotland Yards, was developed by the author, the chief inspector in charge of the finger print bureau.

The common system of finger print identification in use today is based upon a classification using the ten digits of both hands. But the criminal profession seldom is kind enough to leave a clear rolled impression of their ten fingers at the scene of a crime, so the system has been of little use in apprehending a criminal.

The single finger print system seeks to classify a single print in such a manner that identification can be made of the print of but one finger with the minimum of searching. The basis of the Battley system is a small magnifying glass fitted with a window on which are etched eight concentric circles lettered alphabetically.

The single finger print system is not a substitute for the older type of finger printing but supplements it in two types of crime only, safe blowing and house breaking, for these are about the only two crimes where sufficiently clear prints are left to permit identification. However, in this country these crimes are decreasing as other crimes offer larger rewards, do not require a long novitiate and afford less chance of being caught. This is contrary to the experience in continental countries where criminals stay more closely within the limits of their profession. A single finger print file cannot be taken from the present prints, but must be accumulated so that it takes from four to five years before such files are of much service. Due to the necessity for filing ten prints for each person, the files are costly to maintain. It is understood that only two cities in this country have such a file, Los Angeles and St. Louis, but neither use the Battley system. The Department of Justice has not adopted it as yet which mitigates against its usefulness in this country.

The book is written for the finger print technician who is thoroughly grounded in the Henry system. It appears to be practical, thorough and comprehensive in detail. It is being distributed by the Bureau of Social Hygiene, which should be sufficient endorsement of its merit.

J. M. LEONARD.

Detroit Bureau of Governmental Research.

THE GOVERNMENT OF SAN DIEGO COUNTY. Los Angeles: California Taxpayers' Association, Inc., 1931. Report No. 150. 313 pp. $2.00.

This report contains an analysis of the government of San Diego County with recommendations for increasing its efficiency and reducing its cost. This county has an area of 4,221 square miles and 209,659 inhabitants. In addition to the incorporated cities, it has 86 school districts, seven different types of special districts, and five road districts. There are 36 elective county officers.

The report contains detailed statistical data showing an increase in the annual cost of each county activity for the five fiscal years, 1925–26 to 1929–30. The total cost increased about 50 per cent; the cost of charity and health administration more than doubled. Comparative data also shows that its welfare work is relatively more expensive than in various other California counties. It is contended that generosity has made pauperism attractive. Apparently, it is believed that expenditures for charity should be reduced during the depression, because the purchasing power of the dollar has increased. The fact that the need may be greater now receives scant consideration (pp. 104, 105, 114, 125).

Aside from its very conservative point of view

concerning welfare work, the report contains many excellent suggestions. It recommends the abolition of several elective offices and the creation of a coördinating executive officer with extensive powers. It would centralize financial administration in one department, welfare activities in another department, consolidate the county and city health departments, and make the county a unit for local road administration. Here is a modified county manager plan, though that name is not used in the report. It also contends that through appropriate consolidations the number of school districts should be reduced from 86 to 10.

The report recommends a uniform system of cost accounting for county offices and institutions, declaring the present financial reports "unreliable and worthless" (p. 52). It suggests an annual audit of all financial transactions and certain changes in the existing systems of budgeting and purchasing. It also urges that up-to-date mechanical equipment be provided, especially for the collector, treasurer, and recorder. All of these recommendations are ably supported by arguments for economy and efficiency.

The report is particularly valuable for the statistical data presented. More studies of this type are badly needed.

William L. Bradshaw.
University of Missouri.

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State Government. By Finla Goff Crawford. New York: Henry Holt and Company, 1931. x, 533 pp. $3.50.

It is no secret that many teachers of state government have for some time been looking for a college text which approached the subject from the standpoint of administration. When administrative matters constitute about 90 per cent of the work of state government, they can see no good reason why such matters should receive only the scant attention accorded them in a few pages of the current texts. To meet this demand, Professor Crawford has brought out a text book in which more than half of its 500 pages are devoted to a discussion of administrative processes. He has treated these processes in a functional manner, the major functions being civil service, budgeting, taxation, enforcement of law, criminal procedure, correction, charities, health, labor, education, regulation of business, highways, conservation, agriculture, control of public utilities, and supervision of local governments. He has viewed the problems of state government in relation to those of the national and local governments, thus giving the impression of unity and interdependence in governmental operations from top to bottom. This approach will appeal to college students who have puzzled over the seemingly obtuse connections between the different strata of government—national, state, and local.

While Professor Crawford has written a very good text book on state government, he might have produced a better one had he broken more completely with conventional lines. He is to be credited with having drawn to an unusual degree upon the large amount of survey material now available on the administrative processes of state governments.

A serious shortcoming of Professor Crawford's book, from the standpoint of the student, is its failure to delineate the structural arrangement of state administration. While there is some discussion of organization under each administrative function, nowhere is this subject fully treated and clearly outlined, so the student may get an idea of the most approved general set-up under the state reorganization plans which have been adopted during the past fifteen years. Near the end of the book are two chapters, one on municipal government and the other on county government, which are of such character as to add little or nothing to the general theme. The text throughout the book shows evidences of hasty preparation. Many cumbersome details and dry figures might have been avoided by rewriting, and numerous typographical errors eliminated by careful proof reading. However, these are things that may be corrected in a new edition, which Professor Crawford will undoubtedly find occasion to get out.

A. E. Buck.

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Property Taxation in the United States. By Jens Peter Jensen. University of Chicago Press, 1931. xvi, 532 pp. $4.00.

This bulky volume, which is issued in the University of Chicago Studies in Economics, presents, according to the publisher's description, "a consistent treatment, for the first time, of the enormous volume of periodical literature on property taxation." While the claim to priority might be open to some question, the author has industriously covered and reported upon the

literature, including the official reports of permanent and special tax commissions, as well as the discussion on periodicals and special treatises. In fact, he has done this too well, perhaps, for the result is a considerable threshing of old straw. The shortcomings of the general property tax have already been so thoroughly explored and exposed that Professor Jensen is able, in this book, to do little to enlarge the account or to render it more convincing.

There is produced, in consequence, an effect of poor balance. The devotion of so much space to well-known and well-established shortcomings leaves little room, as the book is planned, for constructive treatment. The author recognizes this, and expla ns his purpose by stating that sound tax reform depends upon a greater popular understanding of the flaws and merits of existing state and local tax systems and of practical changes and alternatives, then now prevails (preface).

Greater popular education upon the subject is beyond doubt needed, but the emphasis should be on the merits of the proposed substitutes, in this case. Many prefer the defects of an established tax to the hazards of new taxes which are not clearly understood. Professor Jensen has not wholly neglected these aspects of the problem, but his purpose would have been better served by a sharper focus upon the future tax system.

H. L. Lutz.

Princeton University.

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Classification of the Civil Service of the City of Minneapolis. Civil Service Commission, May 20, 1931. 61 pp.

This classification of the positions in the civil service of Minneapolis is the result of a year's work by the staff of the League of Minnesota Municipalities under the direction of Morris B. Lambie.

One accomplishment of the reclassification was a reduction in the number of payroll titles from 383 active ones to 177. There are, however, 314 eligible list titles in the new plan. This device of using a single payroll title to include several eligible list titles is not widely used but seems to have some merit in simplifying payroll writing while leaving the civil service commission free to use different examinations and establish separate lists for groups of like positions under a single payroll title.

The specifications themselves are disappointing. They are too brief to be of much use for recruiting purposes or even for the information of the appointing officer and the public. Much more thorough work has been done recently in this field in California. There is no attempt to indicate differences in duties or qualifications between elegible list titles under a single payroll title. A list showing lines of promotion is helpful. The lists of payroll titles and eligible list titles would be more useful if indexed to refer to the specifications. Interesting data on salary ranges and rates, turnover, actual promotions, advancement, and age of present employees which were submitted by Dr. Lambie with his report unfortunately were not printed. A compensation plan, based upon this classification, is the next step planned by the civil service commission. This was not included in the assignment given the League, or in the published report.

Harvey Walker.

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A History of the Detroit Street Railways. By Graeme O'Geran. Detroit: The Conover Press, 1931. xvii, 459 pp. This volume is not for sale but is available in practically every library in cities of 30,000 population or more.

The literature on public utilities grows apace. But there still remains a large gap to be filled in with histories of important individual public service enterprises, and of the development of utility services in local areas.

Professor O'Geran's book tells the story of the street railways of Detroit from the time of the first franchise in 1862 down to 1930. The establishment and early struggles of the several small companies between 1862 and 1890, are sketched in the first three chapters. The events of the next decade, a period of political contention, and of successive consolidations whose sole survivor was the Detroit United Railway Company, are methodically described in Part II. By 1900 a struggle for municipal ownership of the street railways had begun under the leadership of Mayor Hazen Pingree. In Part III of the book, the author analyzes and describes the numerous agreements, plans and elections relating to the movement toward public ownership, and gives us an interesting picture of the varying fortunes of the combatants. This period ended in 1920 when Mayor Couzens' plan for municipal ownership was approved at an election. City owner-

ship of a portion of the lines then became a reality. Further negotiation with the company culminated in the purchase contract of 1922, which, after approval by the voters, made public ownership of the street railway lines city-wide. Since then much needed extensions and improvements in service have been made.

Based almost exclusively upon newspaper sources, the reader will wish that the book were mature and interesting. The appendix of fifteen charts and tables contains some useful exhibits, and the bibliography is poorly prepared.

HUBERT F. HAVLIK.

Columbia University.

REPORTS AND PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

San Diego County Report.—California Taxpayers' Association, 1932. 313 pp. At the request of the county Board of Supervisors, the Association has made its second study of San Diego county. This more complete survey presents a picture of the government in a large unchartered California county, excepting its courts and district attorney's office. Besides the description and analysis of the organization, operation and expenditures of the various county government activities, recommendations are made for increasing efficiency and reducing costs. Among the important recommendations which have partly been adopted are the installation of centralized purchasing and the employment of a county purchasing agent, consolidation of the county appraisal department and assessor's office, the use of a traveling auditor, modernization of the accounting system in the auditor's office, improved office equipment for the tax collector, the adoption of the proposed standard system of accounting for county hospitals, the installation of a modern accounting and budgetary system in San Diego City schools. (Apply to California Taxpayers' Association, 775 Subway Terminal Building, Los Angeles.)

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American Public Health Association Year Book, 1931–1932.—American Public Health Association, New York, 1932. 232 pp. The American Public Health Association has rendered a valuable service in publishing this second year book. The description of this professional society of public health workers and its various sections and committees would be in itself an important resource and this takes but a small part of the volume. The book is primarily a collection of the annual reports of the various active committees of the Association. Such reports are intended for members and are in some instances, rather technical for the lay reader, but this does not lessen their importance to all those interested in the promotion of health through public or private agencies. (Apply to American Public Health Association, 450 Seventh Avenue, New York City.)

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Rural Vermont.—The Vermont Commission on Country Life, Burlington, 1931. 385 pp. Two hundred residents of Vermont have coöperated to produce this comprehensive survey of life and conditions in this state whose largest city has a population of less than 25,000. No factor in the development of the state has been omitted, and analyses have been made of the people and their distribution through the state, the natural forces such as topography, climate and soil, agricultural products and conditions, forest and woodworking industries, vacationers, fish, game and wild life, land utilization, home and community life, recreation, medical and educational facilities in the rural sections, care of the handicapped, religious forces, government and citizenship. All of this is then used as a basis for a section on the conservation of Vermont traditions and ideals as a program for the future. The brief chapter on government prepared by Professor Flint of Norwich University recognizes the need of consolidation, preferably under some form of the manager plan, to enable these small communities to provide essential facilities particularly for health, education and fire protection. A keen analysis of this sort, made by a group interested in preserving sound ideas and in assuring progressive development, is of general interest and importance. (Apply to Vermont Commission on Country Life, Burlington. Price $1.50.)

The Other Side of the Tax Problem.—William Anderson. League of Minnesota Municipalities, 1932. 6 pp. The League of Minnesota Municipalities has reprinted from the January issue of their magazine this splendid article by Professor Anderson. Suggesting the need of a reasoned philosophy of government and public expenditures to meet the tax-cutting demands of the day, he examines some of the ideas which might contribute to such a philosophy. The article is too well written to be appropriately summarized here, and the League of Minnesota Municipalities is to be congratulated for putting it in such readily available form. (Apply to League of Minnesota Municipalities, 16 University Library, Minneapolis.)

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Unemployment.—Aaron Director. American Library Association, Chicago, 1932. 54 pp. The noteworthy collection of booklets known as the Reading with a Purpose series is now increased by the timely addition of one on this pressing current problem. Dr. Director briefly describes the chief causes of unemployment and points out some of the more promising methods of reducing it. The brief bibliography is an important further aid. (Apply to American Library Association, Chicago. Price 35 cents.)

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State-Administered Locally-Shared Income Taxes.—American Municipal Association, Chicago, 1932. 12 pp. At the request of several secretaries of state municipal leagues, this report has been prepared by the staff of the American Municipal Association and several members of the faculty of the University of Chicago, to show the present status of municipal sharing of state income taxes. This important source of municipal revenue is operative now in only Massachusetts, New Hampshire, New York, Tennessee and Wisconsin. Tables show how the tax is distributed in these states as well as in the other twenty states which have personal income taxes but do not assign any of the revenue directly to local governments. (Apply to American Municipal Association, 58th Street and Drexel Avenue, Chicago.)

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Proceedings of the Thirty-Seventh Convention of the American Society of Municipal Engineers, St. Louis, Missouri, 1932. 855 pp. Those present at the 1931 convention of the American Society of Municipal Engineers, held at Pittsburgh last fall, heard some sixty speeches on various aspects of municipal engineering. For publication, the addresses of these experts in the varied fields have been grouped into chapters on city planning, airports and landing fields, street and traffic lighting, traffic control, water works, refuse disposal and street cleaning, sewerage and sanitation, municipal legislation and finance, public utilities, street paving, and municipal unemployment work relief programs. The valuable committee reports are also included, and cover such subjects as sidewalks and pavement specifications. Lists of members and an appendix of standard specifications increase the usefulness of the volume. (Apply to American Society of Municipal Engineers, 4359 Lindell Boulevard, St. Louis, Missouri. Price $7.50.)

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About Ballots.—Bureau for Government Research, West Virginia University, Morgantown, 1932. 11 pp. John F. Sly and his associate, George A. Shipman, have prepared an ordinance suitable for enactment in West Virginia on ballots and ballot forms. The ordinance text presented in this booklet has been given an interesting and practical introduction, based on current practice and sound policy. (Apply to Bureau for Government Research, West Virginia University, Morgantown.)

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Community Planning for Homeless Men and Boys.—Robert S. Wilson. Family Welfare Association of America, New York. 144 pp. On the basis of a personal survey in sixteen widely scattered communities in the United States, Mr. Wilson reports on methods of handling the homeless men and boys who, as migratory and jobless workers moving from city to city, congregate in cheap lodging houses and hotels and in free shelters. The demands for community protection as well as for common decency make it imperative that some provision be made to prevent forcing these men into panhandling, begging and criminality. Success with this depends upon securing basic facts as to the extent of the need, coördinating the work of the various community welfare agencies, centralizing the responsibility for caring for the homeless, and administrating relief through experienced social workers who will give constructive individualized service. (Apply to Family Welfare Association of America, 130 East 22nd Street, New York City. Price $.50.)

JUDICIAL DECISIONS

REVIEWED BY C. W. TOOKE, *Professor of Law, New York University*

Editor's Note.—We wish to call the attention of our readers to the communication, in the Notes and Events department of this issue, of Walter Matscheck, director of the Kansas City Civic Research Institute, with reference to the recent decision of the Supreme Court of Missouri in *State of Missouri* v. *Board of Police Commissioners of Kansas City*. It may be noted that a strong dissenting opinion was filed by Judge Frank, concurred in by Chief Judge Atwood, which states the view that the present decision is inconsistent with former decisions of the court and that the existing general statute providing a similarly independent board of police for cities of the first class is open to the same objections as were advanced in the instant case.

The principal ground urged in the majority opinion against the constitutionality of the statute in question is that the mandate requiring the city to pay for the support of the police department whatever amount the board of police may estimate is equivalent to delegating to such an administrative board the power of taxation. The result, the court says, is to make all the revenue of Kansas City subject to the requisitions of the board of police. It may be noted that in the law affecting first class cities this power of requisition is expressly limited to one-sixth of the annual revenue. The decision of the court, however, is not based upon this distinction alone but upon the broad principle that discretionary governmental powers delegated to an administrative board must be reasonably defined and their exercise limited by rules and standards set up by the legislature itself.

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Unemployment Relief.—Preference to Residents in Municipal Contracts.—In *Bohn* v. *Salt Lake City*, 8 Pac. (2d) 591, the Supreme Court of Utah has recently handed down an important decision prohibiting the board of commissioners of Salt Lake City from consummating a proposed contract for the construction of storm sewers, upon the ground that the provisions inserted as to materials and workmen were beyond the powers of the city. In order to relieve the local unemployment situation and to alleviate the business depression, the commissioners formulated last fall a plan for a sewer project to cost $600,000 and to issue bonds in that amount to defray the expense. The bond issue was approved at a special election held October 31 and the commissioners proceeded to let contracts for the work in separate units, each of which contained the provisions substantially as follows:

The contractors agree (1) so far as possible, there being no substantial and material difference in price to them, that all materials shall be Salt Lake City products and manufacture, and, if not procurable in Salt Lake City, then Utah products and manufacture, and if not procurable in Utah, the contractor shall have the right of selection; (2) that all excavating, loading, and back filling shall be done with hand labor, except that teams and tractors may be used for plowing and loosening the materials to be moved; (3) that contractors shall rotate all common labor, and, so far as practicable, all other labor once each week and shall not employ any workmen more than two weeks in any month, nor shall they employ any workman in any month who has had two weeks' work from any source during any given month if there are other men who are unemployed and available. An agency is set up by the commissioners to register all laborers with reference to such desired information, such agency shall not refuse registration to any able-bodied citizen of the United States who has been a bona fide resident of Salt Lake City for

the past year; (4) preference in employment shall be given to citizens of the United States or those having declared their intention to become such, and particularly residents and heads of families of Salt Lake City; (5) eight hours shall constitute a day's labor; (6) that $3.50 per day shall be paid as a minimum wage.

The taxpayers' petition alleged that the increased cost due to the compulsory elimination of mechanical devices will amount to $35,000 and that due to the requirement of rotation of labor not less than $20,000. It was conceded that these unusual and restrictive provisions would add nothing to the value of the improvement but were motivated entirely by considerations affecting the unemployment situation. Upon this fact the majority of the court holds that the contracts are illegal and void and would result in a diversion of the funds of the municipality.

The discretion of municipal authorities in exercising the auxiliary power to contract which may be necessary to carry out an express power ordinarily will not be questioned by the courts unless it is clear that such discretion has been abused and that the contract is fraudulent or plainly unreasonable. It is well established that the state may require its subordinate agencies to include provisions such as here in question in all public contracts[1] and in the absence of such statutory direction the municipal authorities would have a wide discretion. But statutory restrictions upon the power of the city to contract may be imposed by the legislature, and such restrictions, as that requiring competitive bidding and an award to the lowest responsible bidder, are mandatory in the sense that no valid contract can be let in violation thereof and no recovery for benefits resulting to the city by anyone violating them will be allowed. Such a restriction as that mentioned above is a positive limitation upon the power to contract, and will make invalid a contract calling for prequalification of bidders if that requirement will tend to increase the costs of the work to the city and to destroy open competitive bidding.

In the instant case, while the city was not restricted by the requirement of competitive bidding, a law of the state (Comp. Laws Utah, 1917, §4865) provides that in all state or municipal contracts for the construction of public works "preference shall be given to citizens of the United States or those having declared their intention of becoming citizens." The statute must be read into every municipal charter and its effect is not only to impose an express limitation, but under the established principles of statutory construction may well be held to negative any power of the municipal authorities to include any other preferential provisions in municipal contracts. In the instant case the municipal authorities overlooked two elementary principles: that all their powers must find a statutory warrant and that it is not their province but that of the legislative authority of the state to enlarge them by its declaration of public policy. An enabling statute or a validating act by the state legislature conferring the powers sought to be exercised, would undoubtedly be sustained by the courts.

[1] The leading cases are: Atkin v. Kansas, 191 U. S. 207; Campbell v. New York, 244 N. Y. 317, 155 N. E. 628; Heim v. McCall, 239 U. S. 175.

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Municipal Contracts.—Minimum Wage Scale —City Has No Power to Prescribe Unless Expressly Authorized by Statute.—The board of estimates of Baltimore, acting under the assumed authority of section 516 of the city charter which provides that on all municipal contracts employers shall pay the current rate per diem wages in the locality, adopted a minimum scale of wages to be effective for one year, and announced that such schedule should be inserted in every municipal contract for public works. Beyond the provision of the charter, the general statutes provide (Code of Public Laws, Art. 4, §516):

> That eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the Mayor and City Council of Baltimore, except in cases of extraordinary emergency which may arise in time of war or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life; provided, that in all such cases, the laborer, workman or mechanic . . . shall be paid on the basis of eight hours constituting a day's work; provided further, that the rate of per diem wages paid to laborers, workmen or mechanics employed directly by the Mayor and City Council of Baltimore shall not be less than two dollars per diem; provided further, that not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen or mechanics employed by contractors or subcontractors in the execution of any contract or contracts, in any public work within the City of Baltimore.

In *Harlan* v. *Employers' Association of Maryland*, 159 Atl. 267, an action brought to enjoin

the enforcement of the order of the board of estimates, the Court of Appeals of Maryland, while denying that the petitioning contractors were entitled to the relief prayed for, holds that the city has no power to impose such a condition. It is plain that the statutory provisions making mandatory the restrictions as to hours of labor and wages to be paid employees necessarily limit the scope of a power of the city authorities to act in the premises, the same principle of construction as was applied in *Bohn* v. *Salt Lake City*, reported above.

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Control over Municipal Finance.—THE INDIANA SYSTEM—THE CALIFORNIA PLAN.—The Indiana system of control over local finance provides among other things that bonds or other evidences of indebtedness issued by any municipality may not bear interest to exceed six per cent and that if the interest stipulated exceeds five per cent, such issue must have the approval of the state board of tax commissioners. In *Citizens' Bank of Anderson* v. *Town of Burnettsville*, 179 N. E. 724, the Appellate Court of Indiana points out that this provision is mandatory and that securities issued in violation thereof are void. The plaintiff had purchased certain six per cent notes issued to a corporation which had furnished the city with fire equipment. The purchase of such equipment was clearly within the implied powers of the municipality,[1] but the notes had not received the approval of the state board and the court was therefore compelled to sustain a demurrer to the complaint. The statutory provision being mandatory so operates as a limitation upon the power as to preclude the creation of either an express or implied contract based upon the transaction, leaving the plaintiff to an action to recover the specific goods delivered to the city.

The problem of a central supervision of local finance in the home rule states is more difficult, as this would seem to be peculiarly a "municipal affair" within the exclusive gambit of the local charter. So it was held in California in the earlier days of home rule experimentation,[2] but in 1922 the constitution was amended to provide that the deposit of local funds might be made subject to general statutes passed either by the initiative and referendum or by a two-thirds vote of each house of the legislature and approved by the governor. In *McGuire* v. *Wentworth*, 7 Pac. (2d) 729, the District Court of Appeals, First District, in refusing to reverse an order denying a petition to mandamus the auditor of San Francisco to withdraw a deposit from a certain bank because of non-compliance with provisions of the local charter, holds that the charter provision was repealed by the statute duly passed by the legislature in 1927[3] under which the auditor acted in the instant case. The decision is significant in showing how California early realized the intimate interests of the state at large in local financial methods, a lesson that is being brought home by recent developments in many states, where loose methods of local financing in only a few municipalities is seen to be seriously affecting the financial credit not only of the other municipalities but of the state itself.

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Ice Business Not a Public Utility.—THE SUPREME COURT DECLARES OKLAHOMA STATUTE UNCONSTITUTIONAL.—The Supreme Court, affirming the judgment of the lower courts,[4] has decided in *New State Ice Co.* v. *Liebmann*, 52 Sup. Ct. Rep. 371 [Adv.], that the statute of Oklahoma[5] requiring a license or permit from the corporation commission before engaging in the business of manufacturing and distributing ice is invalid under the Fourteenth Amendment. In brief, the majority of the court hold that the ice business is not so charged with a public interest as to be made subject to regulation as a public utility. A dissenting opinion by Mr. Justice Brandeis, concurred in by Mr. Justice Stone, declares that the question of necessity of regulation of such a private business is a matter for the state legislature to determine and emphasizes the social and political considerations that are involved in this momentous decision.

It may be pointed out that this decision does not affect in any way the power of the state legislature, if permitted by its own constitution, to authorize municipalities to engage in this business. Such local activities under statutory or charter authorization have been upheld by the Supreme Court as to coal and wood, gasoline, elevators, packing houses and flour mills.[6] Statutes authorizing municipalities to engage in the ice business have been upheld as valid under

[1] Bluffton v. Studebaker, 106 Ind. 129, 6 N. E. 1.

[2] Rothchild v. Bantel, 152 Cal. 5, 91 Pac. 803.

[3] Stat. 1927, p. 1389.

[4] District Court, 42 Fed. (2d) 913; affirmed, Circuit Court of Appeals, 52 Fed. (2d) 349.

[5] Session Laws, 1925, ch. 147.

[6] Jones v. City of Portland, 245 U. S. 217; Standard Oil Co. v. City of Lincoln, 275 U. S. 504; Green v. Frazier, 253 U. S. 233.

the state constitutions in Arizona, Georgia and Texas.[1] The effect, therefore, of the decision of the Supreme Court in the instant case may be to stimulate municipal ownership by the enactment of empowering statutes in other states. So long as the present decision stands, the ice business whether conducted by private owners or by public agencies will be subject only to the laws of competition, a field within which private enterprise will have but little chance of survival against publicly owned plants with the power of taxation to support them. We cannot but regard the decision as one peculiarly unfortunate for private enterprises of this kind in those states that see fit to authorize public ownership in this line of business.

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Billboard Regulation.—Exclusion of Tobacco Advertisements Upheld—Screening of Ordinary Billboards on Private Property by Public Authorities Declared Unlawful. —Two recent decisions bearing upon the regulation of billboards along the public highways should be noted. The first is *Packer Corporation* v. *State of Utah*, 52 Sup. Ct. Rep. 273 [Adv.], in which the Supreme Court of the United States sustained the Utah statute (Laws of 1921, ch. 145, §2 as amended) prohibiting tobacco advertising by billboards or placards as within the police power of the state, holding such act not invalid as arbitrarily curtailing the right of contract or as a restraint on interstate commerce. This decision affirmed the judgment of the supreme court of the state, which sustained a conviction of the plaintiff for violating the statute. The Supreme Court points out the obvious distinction between the regulation of signs permanently located in the state and of newspaper advertising which may move in interstate commerce, and intimates that advertising which is thrust upon the attention of the public may well be put into a separate class for purposes of police regulation. Under this decision, the states may prohibit any billboard advertising of articles such as tobacco that may be otherwise regulated under the police power.

In the second case, *Perlmutter* v. *Greene*, 234 App. Div. 896, 254 N. Y. S. 542, the New York Appellate Division, Second Department, affirmed a judgment of the lower court, enjoining the state superintendent of public works from cutting off the public view of billboards on private property by the erection of lattice work on the side of the highway as it approaches the Mid-Hudson Bridge. This decision was by a divided court and apparently involved some question as to whether such power had been delegated to the commission. There was no question raised, however, as to the lawfulness of the signs or as to whether the legislature might not subject them to regulation as to location, size or structural details. The same court had previously upheld an ordinance limiting the size and location of signs, erected near the highway to advertise the sale of the property (*People* v. *Wolf*, 220 App. Div. 71). The decision raises the nice question whether the planting of shrubbery along the highway for ornamental purposes would come within the purview of the decision if it should result in screening the view of neighboring property. We do not believe that such an improvement of public property, even though primarily for aesthetic purposes, would come within the principle of the ban in this case, where the facts indicate that the only purpose of the commission was to make invisible lawful signs erected upon their property by the adjoining owners.

It would seem that the method of attacking the billboard evil along the public highways, now under consideration by the National Council for the Protection of Highway Beauty, gives unusual promise of success. This plan is to induce the owners of lands along a projected state highway to convey to the public an easement against billboard construction, an easement which will run with the land appurtenant to the highway and include a license to the state officers to enter at any time and remove such obstructions. This right within reasonable bounds may be easily obtained where the power to purchase such lands is exercised or where lands are taken by eminent domain. It is probable that in most instances where the highway is already established the owners may be induced by a campaign of education to realize that the value which will accrue to their lands from such an arrangement will more than compensate them for voluntarily conveying such an easement to the public.

Some highway authorities, as the Westchester County Park Commission, have felt compelled

[1] Tombstone v. Macia, 30 Ariz. 218, 245 Pac. 677; Holton v. City of Camilla, 134 Ga. 560, 68 S. E. 472; Denton v. Denton Home Ice Co., 119 Tex. 193, 27 S. W. (2d) 119. *Contra:* Union Ice Co. v. Ruston, 135 Ala. 898, 66 So. 262. In Arkansas as well as Oklahoma the courts had upheld the regulation of the ice business as a public utility; Bourland Ice Co. v. Franklin Utilities Co., 180 Ark. 770, 22 S. W. (2d) 993.

to acquire the fee of adjoining lands to protect their boulevards from unsightly structures. The acquisition of an easement as above suggested is a far less costly solution of the problem and we understand that in at least two states, Michigan and Oklahoma, the state highway commissions are making efforts to have such grants included in all conveyances of land for highway purposes. Whether the desired protection may be accomplished by a resort to the police power is still an open question, but the decision of the Supreme Court in the Utah case indicates that there is a broadening field within which the state may exercise its power of regulation to lessen, if not to eliminate entirely, the baneful effects of indiscriminate roadside advertising.

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Municipal Airports.—Liability for Negligence in Operation.—The great wave of municipal subsidy to aviation which the past few years took in the form of the establishment of publicly owned airports in so many of our cities has received a decided check because of the current depression. One discouraging element in the cost of maintenance of such enterprises is the liability arising from negligence of municipal agents or concessionaires. In all states a municipal corporation is held to a common law liability in tort where it carries on any function as a business enterprise or derives a substantial revenue from its operation.

In *Mollincop* v. *City of Salem*, 8 Pac. (2d) 783, the Supreme Court of Oregon holds the city subject to tort liability for injuries received by the plaintiff in being thrown to the ground by a wire string along the entrance of the airport. It seems that the city employed one Eyerly for a term of two years to superintend the field under rules and regulations to be established by the city. Among the plans adopted to raise revenue was a series of aeroplane flights at the cost of one cent a pound, which were patronized by large crowds. As plaintiff with child in arms attempted to step across the wire obstacle which held the crowd back from the weighing machines, the wire was pulled up by some unknown person and she was thrown violently to the ground. The negligence of the management consisted in failing to provide any proper opening for the people invited to patronize the show.

The operating cost of municipal airports due to the nuisance damage to adjoining property or the negligence of employees resulting in injuries to visitors is so serious an item that in at least four states, Wisconsin, South Carolina, Texas and South Dakota, statutes have been passed exempting municipalities from such liability. We cannot help concluding, however, that such enactments are to be regretted. For the protection of the public, municipalities engaged in aviation or in any other commercial industry should be held to the same standards of conduct as private corporations. Upon the general question of the liability of cities in the operation of airports, the reader may be referred to the notes in the May, 1930 number of the Review (Vol. XIX, p. 318).

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Special Assessments.—Direct Liability of City—Validation of Defective Proceedings.—The Supreme Court of Kentucky in *City of Covington* v. *McKenna*, 46 S. W. (2d) 760, reaffirmed the established rule which prevails in that and in many other jurisdictions that the municipality may become directly liable to a contractor on public improvements in an action for damages, although the contract calls for payment to be made from the fund to be raised by special assessments, if it neglects to take the necessary steps to collect the same. This remedy is an alternative to the right to petition for mandamus to compel the proper officers to make and collect the special assessments.

In those states which do not subscribe to the doctrine of direct liability, as above stated, the problem of maintaining the municipal credit devolves in such cases upon the legislature. In Alabama, for example, a recent decision of the state Supreme Court, *Newman* v. *City of Opelika*, 139 So. 247, illustrates how such problems may be met. The courts of Alabama hold that a city will not be liable for the negligence of officers in collecting a special assessment fund. The statutes also exempt cities from direct liability when such funds have been diverted and limit recovery by the one entitled to be paid therefrom to an action against the officers responsible and the sureties on their official bonds. But the state legislature by an act passed last year (Gen. Acts 1931, p. 206) provided: "That all bonds, warrants, notes and other written obligations or evidences of debt heretofore issued for value by cities, towns or counties in the State of Alabama, that are not contrary to the provisions of the Constitution of Alabama or of the United States of America or barred by the Statute of Limitations of the State of Alabama be and the same are

hereby validated and declared to be the binding obligations of the city, town, or county issuing the same."

Under the terms of this broad validating act, the court decides that the holders of special assessments bonds where the funds to meet them have been diverted to other municipal purposes may recover thereon in an action against the city. The example of Alabama might be followed to advantage by some of the other states in which the municipalities have recently taken refuge in technical defenses to escape the payment of obligations issued by them and sold to confiding investors.

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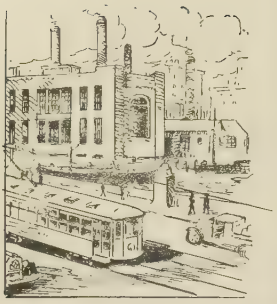
Zoning in New Jersey.—Enforcement of Ordinance by Injunction—Replacement of Old Buildings.—Two recent New Jersey decisions bearing upon the problem of the enforcement of zoning restrictions have recently been reported. In *Srager* v. *Mintz*, 109 N. J. Eq. 544, 158 Atl. 471, the Court of Errors and Appeals had before it for consideration the nice question whether the jurisdiction of the court of chancery of that state could be invoked to enforce a zoning ordinance by injunction. The defendant Mintz had obtained a permit in 1928 to make alterations to a garage building on the rear of his lot in the city of Plainfield and had permitted the other defendants to use it as a poultry slaughterhouse. No allegations were made in the petition that such use constituted a nuisance injurious to the property of the plaintiff, but relief by injunction was sought solely upon the ground that the use of the garage for business purposes was a violation of the city zoning ordinance. In affirming the judgment of the court below dismissing the bill, the court points out that the common law powers of a court of chancery do not extend to the prevention of the commission of crimes or the violation of statutes, unless it is also alleged and shown that the acts of the defendants will result in injury to property. In the instant case, so far as appeared by the petition, the use of the property as a slaughterhouse constituted no invasion of the rights of others and legally would be unobjectionable except for the ordinance in question. The decision follows *Ventnor City* v. *Fulmer*, 92 N. J. Eq. 478, 113 Atl. 488 (aff'd 93 N. J. Eq. 669, 117 Atl. 925) to the effect that equity will not enforce municipal ordinances by injunction unless the act sought to be restrained is a nuisance.

The second case, decided by the state Supreme Court, *State ex rel. Mongiello Bros., Inc.* v. *Board of Commissioners of Jersey City*, 158 Atl. 325, bears upon the right of city authorities to refuse a permit for the erection of a business building upon the ground that the district in which it is to be situated is about to be restricted to residence use by a zoning ordinance. The relators proposed to replace an existing building on their property used for the manufacture, storage and distribution of ice with a new structure to be used for the same purpose. In allowing a writ of mandamus to compel the commissioners to grant the permit the court says that even if the proposed zoning ordinance be passed the relator would have the right to continue the existing use and to erect a new building to take the place of the existing structure.

This decision follows the weight of authority of those cases decided within the past few years where questions bearing upon the right to a continuing use have been raised. So long as the proposed replacement improves the existing conditions as related to the objects of the police power, the local authorities may not restrict the owner's rights by denying him a permit (see: *Gilfillan's Permit*, 291 Pa. 358, 140 Atl. 136; *Washington ex rel.* v. *Roberge*, 278 U. S. 116).



PUBLIC UTILITIES

EDITED BY JOHN BAUER, *Director, American Public Utilities Bureau*

Conference on Regulation.—The growing interest in public utility regulation took pointed shape in the Conference on Regulation held at the Hotel Pennsylvania, New York City, April 8 and 9. This was a natural development among those interested in utilities from the public standpoint. It was due, however, more particularly to the active leadership of Morris L. Cooke, who in 1916 had similarly brought together the noted Conference on Valuation in Philadelphia. The call was signed by eleven others. The attendance was by invitation. It included only persons who, either through official position, research, writing or otherwise, had reached a recognized position on the public side in the utility field—leading commissioners, lawyers, economists, engineers and publicists, about one hundred and fifty persons altogether.

The conference was organized on the round table basis, including the topics which are foremost in the public consideration of regulation. The object was definitely to bring together the best experience and opinion, and to formulate as definitely as practicable, a program for effective regulation. The discussions included the following topics: The Holding Company Situation, Federal Regulation, Valuation, Coordinating Reforms in Classification of Accounts, Domestic Electric Service, Improvement in Regulatory Technique, and Cost Finding.

For each of these topics, there was a leader who outlined the present problems and he was followed by several speakers who had prepared papers on sub-topics. The formal presentation was then followed by free discussion, which was unusually critical and constructive. The present difficulties were presented and the various remedies considered. At the close of the conference, the following report was presented by the Policy Committee, which had been especially appointed to give concrete form to the criticisms of existing conditions and to recommendations for changes in the present system:

REPORT OF POLICY COMMITTEE

Regulation, as now generally administered, has failed to protect investors in public utility securities against the loss of billions of dollars resulting from unsound methods of valuation and financing. It has failed to secure for the small consumer rate reductions corresponding to the decline in prices and wages or the technical trend toward increased domestic use. It has failed also to safeguard the credit of the companies placed under its supervision and control.

ANALYSIS OF EXISTING REGULATION

Effective regulation of public utilities has been progressively weakened as a result of the definite policy of evasion imposed upon the industry by promoters who control public utilities in the interest of speculative profits derived from manipulation of their securities. Today it falls far short of achieving adequately its three major objectives, which are:

1. Protection of the consumer's right to enjoy rates which enable him to afford the fullest possible use of public services, consistent with the operation of the industry on a sound economic basis.

2. Protection of the investor against losses resulting from manipulation of the capital structures of utility companies by financial operators.

3. Protection of the credit of public service companies in order to assure at a minimum cost, the new capital necessary for additions and extensions to their facilities.

Evidences of the failure of regulation to meet these requirements may be briefly enumerated as follows:

1. *Retail rates*, especially for electrical energy, which are not based on the true cost of providing this class of service, but instead are made to bear the brunt of assuring the company a so-called "fair return" on such valuation as it is able to establish in the courts for its entire property used in the service of all classes of consumers.

2. *Valuation* on the basis of so-called "fair value," which represents no real standard for rate making at all, but enables the companies to justify and legalize almost every type of unearned increment, tangible and intangible, which accrues to unregulated monopoly.

3. *Accounting*, which tends to conceal and distort rather than to reveal the essential facts upon which rates, service and security issues are predicated and which in important particulars reflects the position of the public utility industry that these accounts should not hamper the management in stating results of operations in such a way as most effectively to promote their financial interests.

4. *Holding companies*, outside of regulatory control, which encourage uneconomic forms of consolidations, facilitate stock watering, capital inflation and similar forms of misfinancing, make possible secrecy of corporate accounts, permit inflation of costs through charges of service companies, and in general serve as a device for avoiding all forms of regulation and publicity designed to protect the investing interests of those who dominate the companies.

5. *Court procedure*, which permits the utilities to appeal the decision of state regulatory bodies directly to the federal courts before exhausting their remedies in state courts and which constitutes a perpetual threat of long drawn out and costly litigation thus tending to curb the initiative of commissions in prosecuting actions in the public interest.

6. *Regulatory technique* which today tends toward the conception of a public service commission as a court which simply waits for issues to be raised rather than as an administrative body designed to provide the people with a positive control of their monopolistic public services.

RECOMMENDATIONS

Unless the trend represented by the above analysis can be reversed, and effective regulation established, we may look forward to a shift of public opinion toward other methods of assuring public services at reasonable prices, with the probability that this will mean increased emphasis on public ownership and operation.

To remedy the defects which we have enumerated and to reassert the public interest in utility regulation, we recommend:

1. *Development and adoption of a technique of regulation* in accordance with which public service commissions will operate as effective administrative bodies charged with safeguarding the public interest. This will include provision for the initiation by the commissions of rate changes and other constructive stops in the interest of consumers on the basis of aggressive fact finding.

2. *Establishment by law of the prudent investment principle of valuation* as the public policy of the nation and the states for purposes of rate control. By this we mean the actual investment except where affirmatively shown to have been imprudent or illegal, less actual depreciation representing loss of service life through use, inadequacy or obsolescence.

3. *Rate determination on the basis of actual cost of each class of service* including a fair profit on the capital required for such service. This will necessitate accurate ascertainment of costs properly allocated to the various classes of service. In the fixing of electric rates it will take full account of the possibility of developing domestic consumption to the point where it will have the best load factor through schedules adjusted accurately to the diminishing unit cost of increased average use.

4. *Revision of the present uniform classification of accounts* to serve as a guide in establishing the equities of the various rates as well as of total earnings. The object will be to secure a system of accounting which (a) positively and accurately reveals the true financial status of the reporting organization; (b) so classifies expenditures relating to fixed capital, operation, maintenance and financing, etc., that the costs of the respective functions and of the various classes of service can reasonably be deduced directly without further analysis of original vouchers, and (c) classifies revenues as specifically received from the various priced services or other sources.

5. *Federal incorporation of holding companies* with adequate control over their security issues and requirement of uniform accounting and periodic disclosure of their financial operations.

In so far as utility holding companies or their affiliated or subsidiary corporations, whether within or without the states, have transactions with an operating company subject to the control of a state commission, said commission should have all necessary powers to determine the reasonableness of the charges made for services or commodities which affect rates to consumers and to forbid such transactions as may injure the credit of the company.

6. *Withdrawal of the powers of the lower Federal Courts* to review and nullify the decisions of state public service commissions, leaving the protection of constitutional rights to the state courts, and, ultimately, to the United States Supreme Court.

7. *Provisions for publication by the State Commissions* of a regular bulletin designed to distribute in popular form data on rates, costs, net earnings, etc., gathered by the staff. This bulletin might follow the general lines of the employment and wage statistics published monthly by various state labor bureaus.

8. *Authorization of municipalities*, after referendum vote of their citizens, to build or acquire by condemnation and operate public utility plants and distribution systems, and to form power districts for the same purpose, without securing certificates of convenience and necessity from a public service commission.

9. *Provision for national and state power planning* either by existing commissions or by special boards, so that future developments may be economically sound and in accord with the needs of the people.

We are convinced that an adequate approach to the problem of strengthening regulation must not only extend its control to all business interests primarily concerned with utility financing and operation but must also render regulatory practice more effective through clarification rather than by multiplying machinery and increasing its cost.

This implies the appointment of commissioners and the selection of members of their staffs on the basis of competence and public zeal rather than political preferment.

We are further convinced that, in all matters relating to operating companies, the regulatory power should be centered in the states acting either separately or through agreements. Where joint action is necessary it should be facilitated by federal legislation along the lines suggested in the Couzens bill.

To the end that this program may be made effective, we recommend that this conference create an agency to continue the activities here begun.

Respectfully submitted,

FRANK P. WALSH.

Chairman, Policy Committee,

Round Table Conference on Regulation.

This report was received by the members of the conference for study and future consideration. It was not formally adopted as the accepted program of the conference because some individuals, due to official position, could not practically join in the statement and there was considerable difference of opinion on special matters. In the final issuance of the report, moreover, the committee was left free to make modifications so as to eliminate possible overstatements and literary defects due to hurried preparation.

It is probably correct to state that outside of members of commissions, the report is supported by the consensus of opinion of the conference. The feeling appeared quite general that the expressed criticisms of existing regulation and the proposals for more effective future regulation, are in the main correctly stated.

Besides the items included in the report as submitted by the committee, there was added a paragraph at the suggestion of Professor W. Z. Ripley of Harvard University, that provisions for standard accounting and publicity of accounts should stand foremost in the control of holding companies, for such provisions could be more readily attained than for the other proposals. The program as a whole stands as the first definitive outline adopted in concerted action by competent people and placed for consideration before students, commissions and others interested in proper standards of regulation. It should be the beginning of organized action to bring about legislation to take regulation out of the present chaos in which it has been floundering these many years.

A continuation committee, with Professor James C. Bonbright of Columbia University as chairman, was appointed to arrange for future meetings. The proceedings will probably be published and copies can be obtained by addressing Mr. Morris L. Cooke, 1520 Locust Street, Philadelphia, Pa.

MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER *Virginia Bureau of Public Administration*

Trolley Buses in Nottingham.—Life has continued apace at Nottingham since Robin Hood won the Sheriff's silver arrow with the golden tip and presented it to the lovely Maid Marian upon the village's historic green. A tramcar now half-hourly wends its way through Sherwood Forest, where once the Merry Men held full sway. Even this almost-contemporary of Robin is destined soon to disappear, and be supplanted by a trolley bus.

The Nottingham Corporation Act of 1930 authorized the displacement, over a period of some eight years, of the existing transit facilities of the city, and the installation of railless trolley buses as the tramcars become obsolescent in various parts of the municipality. Mr. W. G. Marks, writing in *The Electric Railway, Bus and Tram Journal* for February 12, discusses the reasons which led Nottingham to select trolley buses for the new Nottingham transit plan.

Nottingham, like many other provincial English cities and towns, does not have roads of adequate width to permit tramcars to be operated along a private right-of-way, and therefore, so long as tramways remain in the street, they necessarily must considerably obstruct other vehicular traffic, which, owing to the development of motor cars, has accelerated enormously since the days when tramways were first installed. Likewise, the danger of boarding and leaving tramcars, involving the crossing of a traffic lane of from 10 to 25 feet in width, became increasingly obvious, and was not to be solved except by measures which would slow down motor traffic to an unbearable degree. Finally, if the tramcars were to be retained, they would have to be modernized, and this would involve a heavy capital expenditure. So it was decided to eliminate tramcars.

Consideration was then paid to the relative advantages of gasoline buses and trolley buses. Decision was finally made in favor of electric buses because: (1) a considerable part of the overhead equipment was readily adaptable for trolley bus uses; (2) the electric energy, which constitutes an important part of the output of the Corporation Electricity Works, is an all-British product; (3) the complete absence of noise and atmospheric contamination, due to the elimination of engine and gears, was more acceptable to the riding populace and to the people generally; (4) the rapid acceleration possible with an electric drive permits a much higher average speed along heavy traffic routes.

Up to the present time 7 route miles of tramways have been converted and 2.25 miles of new trolley bus equipment installed upon what was previously a gasoline bus route. This comprises five routes radiating from the center of the city. Seven main tramway routes comprising 19.5 route miles remain to be converted and 2.91 route miles of new equipment to be installed. It is expected that conversion will proceed at the rate of about 3.5 route miles yearly.

Little consideration has been paid to the economies in street maintenance and pavement life which German experience has indicated may well be expected from trolley buses. Continental buses are, on the whole, much lighter than the English electric buses. Recent Nottingham purchases have been double-decked 60-seaters mounted on pneumatic tires. Air brakes have been substituted for electric braking, and considerable weight eliminated by this means.

The Nottingham buses are all two-man machines, and the operating cost is raised proportionately. All in all, the Nottingham project cannot be regarded as having cheap transportation for its objective, and it is doubtful whether its operation will provide examples of economies comparable with those of continental cities which have adopted this form of public transportation.

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Austrian Cities in the Financial Crisis.—Dr. Carl Honay, secretary of the *Oesterreichische Städtebund* writing in a recent issue of *L'Administration Locale* discusses in a very interesting manner the fiscal conditions of local governments in German-Austria during the present financial crisis.

He points out that the dire financial straits in which Austrian local government generally finds itself at present is due to the limited sources of its revenue. The localities have been given no new revenue sources during the depression, and while the taxes from the customary sources have been declining steadily, expenditures in behalf of unemployment relief have been regularly mounting.

The most important sources of Austrian local government revenue are the municipal surtaxes, which are amounts assigned by the state from the income of the regular state taxes, and the tax on wages. This latter wage tax is about the only revenue source in which there is even normally any elasticity, and economic facts have at the present time eliminated the elasticity in this source which is possible at law. In consequence many communes are faced with the problem of carrying on added services, extending existing services, and maintaining virtually all the functions which have been regularly performed with the prospect of revenue shrinkages of from 25 to 40 per cent. Furthermore, the Austrian government has shown no tendency to assist in relieving the communes of their overwhelming financial burdens with the single exception of a resolution of the National Council passed at the end of last year which provided for a three million schilling subsidy for aid during the winter months. This crisis subsidy was, of course, a mere bagatelle as far as substantive relief is concerned.

Drastic programs of economy and retrenchment have been entered upon by practically all of the communes. Dr. Honay comments that many of these economy programs have not seemed to be particularly well formulated. Vienna in particular has been, in his opinion, quite ruthless and not too rational in its budget slashing. Road construction, waterways, canals, school buildings and capital improvements generally have been virtually entirely eliminated from immediately prospective budgets. In many phases of social work, and regrettably in child welfare, drastic reductions have been made. Tuberculosis clinics, hospitals, a child-care institution, and three schools have been closed, while several projected public playgrounds and open-air baths for children will not be proceeded with.

Salary reductions also have been the order of the day. In the larger local administrations employees are, as usual, compensated at a somewhat higher rate than are those of the state. The government has laid before the National Council a bill establishing identical salary scales for state and local employees and penalizing the non-observance of this statute by an equivalent confiscation of the municipality's portion of the assigned state taxes. This proposal was refused, however, and the matter of salary reductions is still suspended, contingent upon agreement between the associations of employees and the several local governments. In the event that satisfactory negotiations are not forthcoming salary reductions will be made with retrospective effect as of October 1, 1931.

The Austrian Municipal League has analyzed the problem of municipal finance and has taken the position that the localities cannot and will not be helped by slashing the budget for their essential services or by drastic salary reductions. The major item in many Austrian local budgets at the present time is debt service. For short-term loans municipalities in Austria must pay at the rate of approximately 12 per cent. The *Städiebund* has suggested the refunding of these short-term notes into long-term bonds which would pay 7 or 8 per cent interest, and in so doing has provoked much discord between the Vienna Provincial Mortgage Bank, which is prepared to assist materially in handling this transaction, and the other mortgage banks of the country which are opposed to such refunding. The government has favored the position of the mortgage banks not desiring to refund present communal short-term obligations. Consequently the Vienna bank is prevented by the government from refinancing practically all of the communes, while the localities are them-

selves forced to borrow still more at the rate of 12 per cent or more.

The *Städtebund* has also endeavored to persuade the central government to give the localities a proportion of new state taxes which have been recently imposed. Added income taxes, special sales taxes, a tax on bachelors, and a new motor fuel levy are among the taxes recently introduced. The government has refused to share this with the communes. The plea of the communes to increase the rate on buildings and improvements was also disallowed by the central government.

Meanwhile the central government has balanced the national budget satisfactorily without doing anything noteworthy toward the relief of communal fiscal difficulties. Dr. Honay is of the opinion that this continued neglect possibly may necessitate a change in the policy forming personnel of the national government.

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Personnel Expenditures in Europe.—M. Angelos Angelopoulos has, in a recent issue of the *Revue de science et de législation financières*, written a very interesting article on Fiscal Charges and Public Expenditures, a considerable portion of which relates to expenditures for the civil personnel of the governments of Germany, France, England and Italy. While M. Angelopoulos is cognizant of the many opportunities for error in the classification which he has made of public expenditures and of the even greater danger of interpreting these statistics generally without regard for the great variations in governmental devolution in the several states, he is confident that the statistics presented in this article, and which are reproduced in part here, are valid as far as they go.

Eliminating all military charges it is noted that in Germany the proportion of the total budget which goes for personnel is 65.5 per cent; in France 72 per cent; in England 67.5 per cent; and in Italy 60.2 per cent. These figures, however, do not indicate that France, for example, has necessarily a superior governmental personnel or that on the whole it is more generous in its compensation of public employees. In illustration of this point M. Angelopoulos indicates the increase in expenditures for personnel in the years between 1913 and 1930. These expenditures are calculated in pre-war francs. It is revealed that in 1913 the following nations spent for civil personnel the following sums in millions of francs: Germany, 1,164; France, 1,465; England, 1,260; Italy, 542.

In 1930, on the other hand, the respective expenditures were: Germany, 4,458; France, 2,470; England, 4,388; Italy, 1,293.

This indicates that the expenditures for personnel have actually increased far more in Germany and England than in France. Germany, for example, increased 284 per cent, England increased 250 per cent, Italy increased 142 per cent, while France though leading the list in the proportion of its total civil budget paid for personal services increased only 80 per cent. Consequently these statistics, while certainly not lending themselves to any general conclusions, could be as well interpreted to mean that France has been consistently parsimonious in its expenditures for *materiel* as that Germany is not willing to compensate her employees as generously as France.

A very interesting relationship between the central and local personnel is indicated in the figures at the foot of the following table:

Service	Germany	%	Per M pop.	France	%	Per M pop.	England	%	Per M pop.	Italy	%	Per M pop.
Public Safety	155,311	16	4.9	78,000	14	3.7	63,300	14	3.3			
Justice	83,177	9	2.6	14,500	3	0.7	9,500	2	0.5	35,700	5	1.8
Education	296,095	32	9.2	154,500	26	7.3	214,000	46	10.2	189,600	25	9.7
Financial Administration	124,795	10	3.9	60,900	11	2.9	21,700	5	1.1			
General Administration	276,890	33	8.6	260,700	46	12.4	154,400	33	8.9	527,000	70	26.8
Total	936,268	100	29.2	568,600	100	27.0	463,100	100	24.0	752,300	100	38.3
Central Administration	505,767	54	15.8	318,200	56	15.1	113,000	24	6.0	752,300	100	38.3
Local Administration	430,501	46	13.4	250,400	44	11.9	350,100	76	18.0	.....	...	....

The complete centralization of Italian local government eliminates the possibility of comparative statistics with reference to local and

central employees. In Germany however there are almost as many local employees as there are employees of the national government. In France the percentage is somewhat lower. In England on the contrary the local functionaries are over three times as numerous as those of the central government.

The statistics relating to the employees in the different branches of government are definitely more useful for comparative purposes inasmuch as they tend to minimize the discrepancies due to administrative devolution. Here, however, the peculiar arrangement and classification of Italian personnel largely eliminates any significant comparisons being made which would include Italy. The statistics of the tables speak very largely for themselves. They indicate considerable constancy as between Germany, France and England. Germany leads, of course, in the proportion of its total personnel devoted to public safety as well as the proportion devoted to justice. England leads in the number of educational employees, these comprising almost half of its total personnel, while France in this line runs a very bad third, being almost identical with Italy. Germany and France lead in the proportion of their personnel devoted to financial administration, while the extreme bureaucracy of the entire French administrative structure is revealed by the fact that almost half of its employees are utilized for purposes of general administration or what would be termed in this country, "staff functions."

These statistics, while extremely interesting, indicate as M. Angelopoulos admits, only the things which everyone knows already about the governmental structure of the countries covered. The *rapporteur* comments upon the variation in educational personnel by explaining that in France and Italy and to a lesser degree in Germany private and parochial education still obtains. It might be pointed out further that the divergence in public safety personnel percentages may be less due to the heavy policing in Germany than to the extensive use of volunteer fire brigades and the more or less voluntary local rural constabulary in England. The writer seems convinced that England's personnel percentages are on the whole more valid and explainable than those of France and Germany and certainly those of Italy. The statistics relevant to Italy lend considerable color to the assertions made by several American writers that the Fascist régime is engaging in a considerable amount of log-rolling. Germany has traditionally been governmentally overmanned and the large number of the civil personnel is somewhat less significant for that fact. At the same time M. Angelopoulos is of the opinion that the civil personnel statistics perhaps may be construed into a concrete illustration of the politicizing of the administration over and above the degree to which they reflect the administrative structure and the mode of government of the several states.

NOTES AND EVENTS

Trial of Pittsburgh Mayor Makes Slow Progress.—So far the trial of Mayor Kline of Pittsburgh has been nothing but delays and postponements, though interesting and unusual ones. The indictments for malfeasance in office were returned last June, but at once the September primaries intervened; then it seemed the trial would take place during October; next the district attorney promised it "before Christmas." This turned out to be legal terminology for January 19. Was it feared the Christmas spirit might unduly influence a Pittsburgh jury?

In the meantime an unusually bitter primary campaign, enlivened by a courageous press, convinced the Kline counsel that a change of venue would be desirable and perhaps obtainable. While the trial was held in abeyance, an appeal to the state supreme court was heard, and on January 20 the seat of the trial was transferred to the adjoining county of Butler. How unusual: An American court declaring that a public official cannot get a fair trial in his own jurisdiction. President Judge Finletter of Philadelphia County was assigned to the case. Later the Butler County court set the trial for March 14.

Butler officials kept the panel secret until February 15. However, mysterious interviews with members of the panel were reported even previous to that time, and the Butler district attorney ordered an investigation. Early in March, tampering seemed evident. An immediate grand jury investigation was ordered. On the third day of the inquiry the jury recommended indictments on conspiracy and embracery charges against eight persons, including a Butler County clergyman, the wife of a Pittsburgh city detective, a Pittsburgh city employee, and a wealthy Allegheny County contractor.

On the day previous to the return of the indictments (March 12), Judge Finletter, who had already arrived for the trial called for March 14, postponed the case until May 2. Neither the prosecution nor the defense objected. The judge declared that an unbiased jury could not be chosen from the panel of 66, most of whom had been called before the grand jury in the "fixing" inquiry.

It has not been publicly alleged that the mayor is himself implicated in the plot—direct orders of a political boss are not necessary in such circumstance. During the present mayor's term of office, Seattle and Detroit have recalled unpopular executives, but Pittsburgh government remains in the hands of indicted, unpopular "King Charlie." Only conviction in the slow-moving courts can give Pittsburgh any relief in this direction before January, 1933.

ELBERT EIBLING.

University of Pittsburgh.

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National Recreation Association Dissents from Committee Report on Standards of Play and Recreation.—George D. Butler of the National Recreation Association has submitted the following letter as the Association's expression of opinion with reference to the report of our Committee on Play and Recreation Administration which appeared as a supplement to the NATIONAL MUNICIPAL REVIEW in August, 1931.

To the Editor of the National Municipal Review.
Sir:

In the report which you have published, "Standards of Play and Recreation Administration," a certain standardized plan of administration for recreation in American cities is set up as the ideal—the administration of play and recreation for children of school age by the schools, the administration of play and recreation for those beyond school age and of preschool age by the municipalities.

The experience of the Association gained through periodic field visits to more than six

hundred communities throughout the country has led our Board of Directors and our staff members to feel strongly that it is desirable that all of the school facilities and all of the park facilities and all other local facilities be utilized as far as possible for the play and recreation of the people, but conditions have been found so different in different communities that it has not seemed desirable to attempt to set up a single standard form of administration as the ideal and advocate this as the plan toward which all communities should work.

Representatives of the Association have carefully studied the report and supporting data and do not feel that the data presented fairly represent the true situation.

At this particular time it is perhaps more important to help maintain the play and recreation centers which have been built up in our American cities during the last twenty-five years than to enter into an involved detailed discussion of the problem of recreation administration. At the same time, if any readers of the NATIONAL MUNICIPAL REVIEW wish to go carefully into this question, detailed facts and material on which the Association bases its judgment are available at the office of the Association, 315 Fourth Avenue, New York City.

GEORGE D. BUTLER.

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Congressional and Legislative Redistricting in Washington.—The division of the state of Washington into six congressional districts, in order to provide for an additional representative apportioned to the state as a result of the latest federal census, has raised no constitutional question as to the competency of the legislature to act as an independent body in such matters. The redistricting act was passed in due form and approved by the governor on March 9, 1931. But the new apportionment has shown the need of reforming a legislature which for years has been dominated by overrepresented rural counties. Five of the six recently created districts are overrepresented and one, the district in which is situated the city of Seattle, is greatly underrepresented. Since the present population of Washington is 1,563,396, each representative of the state ought, under ideal conditions, to sit for 260,566 inhabitants. As a matter of fact, the first congressional district (comprising the city of Seattle and Kitsap County) has a population of 396,359. In the other five districts the number of inhabitants varies from 209,433 (fourth district) to 250,064 (fifth district).

An excessive representation of the rural counties has been maintained in the state legislature also because that body has refused to abide by the provisions of the state constitution. This neglect of duty can be explained in part by sectional rivalry, but in much greater part by widespread jealousy of the rapidly growing city of Seattle. Although the constitution has required from the beginning that a decennial state census be taken (the first in 1895), and that a redistribution of legislative seats be made after each state and each federal enumeration, no state census has ever been taken, and from 1901 to 1930 there was no reapportionment of legislative seats. In the meantime population was concentrating in the upper Puget Sound Basin. But the "cow-county" bloc, which completely dominated the legislature, turned a deaf ear to all the requests of Seattle for a just representation.

In 1930, however, it appeared that a way out of the difficulty had been found. In that year Initiative Measure No. 57, providing for a general reapportionment of legislative seats, was carried by the slight majority of 795 votes. Though largely sponsored by Seattle, this was a moderate measure, the justness of which no one could deny. Under its provisions the members of the 1933 session of the legislature will be elected.

Yet this victory has not effected the final overthrow of the "cow-county" bloc. In 1931 this organization carried through the legislature a proposed amendment to the constitution, which, if adopted, will nullify the provisions of Initiative Measure No. 57. This proposed amendment would provide for a decennial redistribution of legislative seats by executive proclamation if the legislature should fail to act, but would prevent any county from acquiring more than 21 per cent of the membership of the house and would insure at least one representative to each county. The import of this is clear when one observes that King County, of which Seattle is the seat of government, now contains virtually 30 per cent of the population of the state and that there are fifteen rural counties which have populations of less than 10,000 each. In a house of ninety-eight members, with the inhabitants of Washington numbering 1,563,396, a representative should sit for 15,953 persons.

If this measure should be approved by the electorate next November, the "cow-county" bloc would receive constitutional sanction for an unjust representation which it has heretofore maintained notwithstanding the fundamental law of the state. Government based upon a system of rotten boroughs would be sanctioned. And in its constitutional stronghold the "cow-

county" bloc would be secure, for the electorate cannot initiate amendments to the constitution of Washington.

J. Orin Oliphant.

Antioch College.

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Michigan Appraises Local Rural Government.—An all-day conference on problems of local rural government was held on March 18, at Ann Arbor, under the auspices of the History and Political Science Section of the Michigan Academy, Arthur W. Bromage, chairman. In the morning Clarence L. Ayre, chairman of the State Commission of Inquiry into County, Township, and School District Government, heard progress reports from Dr. Lent D. Upson, director of the survey, and from those in charge of functional studies. Considerable progress was made in the selection of typical counties to be surveyed under the direction of Professors Reed and Bromage. Professor Jesse S. Reeves introduced Dr. William A. Robson of the London School of Economics and Political Science to some seventy present at the luncheon session. After pointing out that England had problems both of local and national government, Dr. Robson proposed that general local governmental agencies form interlocking directorates to control functional districts serving regional needs.

Professor Paul W. Wager, in treating the current developments in local rural government in North Carolina and Virginia, emphasized the relief furnished to the general property taxpayer by state assumption in North Carolina of the six months' school term and the county road system. He urged county consolidation as the next major step to economy.

Professor Thomas H. Reed presided at the afternoon session devoted to the Michigan situation. Professor Arthur Lyon Cross told of Michigan's inheritance from local rural government in Old and New England. Dr. Upson outlined the aims and organization of the State Commission of Inquiry. Harold Smith discussed the functions of a state league of municipalities, with emphasis upon the work of the Michigan Municipal League. An attendance of more than one hundred persons at this session was apt testimony to the growing interest in county and township government in Michigan.

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Another Good Billboard Decision.—The case of *The Packer Corporation* v. *State of Utah*, decided February 23, 1932, by the United States Supreme Court gives further encouragement to the fighters against the billboard blight.

The decision affirms the constitutionality of the Utah statute (L. 1921, Chap. 145, §2, as amended by L. 1923, Chap. 52, §2, and by L. 1929, Chap. 92) making it "a misdemeanor for any person, company or corporation to display on any billboard, street car sign, street car, placard, or on any other object or place of display, any advertisement of cigarettes, cigarette papers, cigars, chewing tobacco, or smoking tobacco," etc., and disposes of the contention that, because the posters or cards are shipped in from outside the state, the display of such advertising is interstate commerce or is beyond the police power of the state to regulate or prohibit. "The prohibition is non-discriminatory, applying regardless of the origin of the poster. Its operation is wholly intrastate, beginning after the interstate movement of the poster has ceased."

But to opponents of the billboard nuisance the chief interest of the decision will lie in the new ground recognized by the Supreme Court for placing outdoor advertising in a class by itself, subject to its own special regulations and controls, regardless of whether or not similar restrictions or prohibitions are placed on other advertising media.

Quoting with approval from the opinion of the Supreme Court of Utah (297 Pacific Rep. 1013) Justice Brandeis, writing for a unanimous court, says:

> Moreover, as the State Court has shown, there is a difference which justifies the classification between display advertising and that in periodicals or newspapers: "Billboards, street car signs, and placards and such are in a class by themselves. They are wholly intrastate, and the restrictions apply without discrimination to all in the same class. Advertisements of this sort are constantly before the eyes of observers on the streets and in street cars to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. The young people as well as the adults have those of the billboard thrust upon them by all the arts and devices that skill can produce. In the case of newspapers and magazines, there must be some seeking by one who is to see and read the advertisement. The radio can be turned off, but not so the billboard or street car placard. These distinctions clearly place this kind of advertisement in a position to be classified so that regulations or prohibitions may be imposed upon all within the class. This is impossible with respect to newspapers and magazines."

In other words, the fact that the public cannot escape from outdoor advertising or advertising in public vehicles, or escapes with difficulty, is enough to justify special restrictions upon such advertising which are not imposed upon other forms. Those who "thrust" advertisements upon the public willy-nilly create automatically a new and additional ground for their own restraint. Obviously a decision in accord with common-sense and the realities of the situation.

This case, indeed, adds two authorities to the growing list of those standing for the proposition (abhorred by all billboard men) that outdoor advertising is in a class by itself and is thus subject to its own special regulation under the police power, for the passage above quoted is the language both of the Utah Supreme Court and of the United States Supreme Court.

The United States Supreme Court has taken this position at least twice before (*Cusack Company* v. *City of Chicago*, 242 U. S. 526; 529. *St. Louis Poster Advertising Company* v. *St. Louis*, 249 U. S. 269; 274). Missouri (in the case last cited, 235 Mo. 99; 192), Indiana (*General Outdoor Advertising Company* v. *City of Indianapolis*, 172 Northeastern Rep. 309) and now Utah, are on the list. Heretofore, the classification has been based on the boards being a special kind of *structure*, different from buildings. The separate classification is now based on a new and second factor—the purpose and use of such structures, and their effect on the beholder.

ALBERT S. BARD.

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Kansas City Wins Police Home Rule.—On the morning of March 15 my 'phone rang and I was informed that the Supreme Court of Missouri had given Kansas City control of its police department. I ought to be immune to surprise at anything which might happen in Kansas City government, but this was to me and to all except, perhaps, a few city officials, wholly unexpected.

For years those of us who wanted the city to operate and control its own police department had been going to the legislature regularly with bills which would end state control. But conditions—political and otherwise—were never just right. As to securing home rule by supreme court decision, it had been definitely decided that policing is a state and not a local function.

But the city manager was not satisfied, and in the last of the periodic suits filed by the police commissioners (appointed by the governor) to compel the city to pay to the department the appropriation requested, the city raised the question of the constitutionality of the law under which the department has operated. And the court held the law unconstitutional in a five to two opinion. It seems the particular question involved had not been raised before.

The police department of Kansas City has been under the control of the state since 1874. Under the law as it has existed in recent years, the department is administered by a commission of three members, two appointed by the governor and the mayor, ex-officio.

The city attacked the law on the ground that it delegated legislative powers to an administrative board. In this contention the city was upheld, the court holding that the limitations in the law were not sufficiently definite to prevent the commissioners from making almost unlimited demands on the city treasury. It goes on to say that "assuming that the creation and maintenance of a police force within and for Kansas City is a state and not a municipal function, a theory to which the writer (of the opinion) is not committed," the legislature may fix restrictions by specific tax rate, amount to be appropriated, or definite rules, regulations and standards which would make definite the amount to be raised. "The statute in question, however, furnishes no such legislative guidance. On the contrary, it confers upon the police board an unrestrained discretion to appropriate from Kansas City's revenues whatever sum or sums it deems necessary for the enlargement and maintenance of the police force and the police department. In doing so it delegates to the police board the legislative power to tax, in violation of the organic law.

"In requiring the city to pay from tax funds the expenses of the police department, the legislature is in effect compelling it to levy taxes for that purpose. And in so far as the legislature has delegated to the police board the power to determine, without legislative control or guidance of any sort, but at its own discretion, the amount of the city's revenue that shall be appropriated and expended for the maintenance of a police department, it has to that extent delegated to the board the power to tax. The power to levy a tax and the power to create a debt to be discharged by the levy of a tax are substantially the same thing.

"The power to tax is a legislative power, and like other legislative powers is nondelegable,

except in the case of municipal corporations, and where there is an express constitutional warrant."

The law was held unconstitutional but the previous position of the court that maintenance of a police department in Kansas City is a state function was not changed. All that the legislature needs to do is to pass a law meeting the objections of the court and control will revert to the state. Whether this will be done depends probably on the political complexion of the next legislature.

When Kansas City's charter was written in 1925, a provision was inserted that "when the laws of the state do not prohibit, there shall be a department of police, the head of which shall be the director of police." The director is appointed by the city manager. When the Supreme Court held the police law unconstitutional, there ceased to be a law prohibiting a city-controlled department. The city is, therefore, now operating the department. The city manager has insisted that the cost of the department can be reduced. He now has the opportunity to try. He also has the opportunity to supplant antiquated organization and methods with modern procedures. Much progress has been made by the department in recent years, but the removal of limitations opens the way to even more substantial gains.

The police departments of St. Louis and St. Joseph, the only other departments in the state under state control, are not affected by the decision since they operate under different laws. The court went to considerable trouble to show that the laws are different, but it is difficult for a layman to see how the St. Louis law can be upheld if it is brought before the court. The St. Joseph law does have a specific limitation on the amount of funds which can be requested by the police board.

WALTER MATSCHECK.

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Financial and Administrative Reform Bills before New Jersey Legislature.—The New Jersey legislature has before it twenty-five bills which are sponsored by the "Tax Survey Commission."[1] They include an income tax law, numerous measures increasing control of state administrative officers over local government, restrictions on borrowing, and provision for consolidations in the interest of economy.

[1] The Commission to Investigate County and Municipal Taxation and Expenditures.

The income tax measure[2] provides for a tax on personal incomes at rates of 1 to 5 per cent and on corporate incomes at 3 per cent. The tax on the first $5,000 of personal income is 1 per cent, on the second $5,000 it is 2 per cent, etc., and on all over $20,000 the tax is 5 per cent. Everyone with a net income of $1,000 must file a return, and no deduction is allowed to anyone for living expenses or dependents. In addition to the normal tax a levy of 3 per cent is imposed upon income from interest and dividends. Adults with a net income of less than $1,000 must also file a statement and pay a uniform tax of $3.00. Incomes earned in the state by non-residents are subject to tax; but a credit is allowed for an income tax paid in the non-resident's state, provided the non-resident's state allows an equally liberal credit to residents of New Jersey. The credit allowed on the New Jersey tax is to the tax paid in the home state of the non-resident as the income earned in New Jersey is to the non-resident's total net income. There is provision for collection at the source in some cases.

Corporate incomes earned in New Jersey would be subject to a tax of 3 per cent, and in allocating the income to New Jersey, three tests are used—value of tangible property in the state, payroll in the state, and gross receipts in the state. New Jersey's historic interest in her "domestic" corporations continues in this measure; those with only a statutory office in the state are specifically exempt from the tax.

The last clause provides that the act shall not be effective until certain services of local government are transferred to the state and local property taxes reduced. This is the purpose of the Tax Survey Commission in framing the bill.

Five bills provide for state administrative control of local government. One[3] creates a bureau of standards in the department of municipal accounts with broad power to investigate and report for comparison concerning salaries, payrolls, materials, and administrative organization of municipalities. The bureau would have power to compel a city to show its own unit costs compared with standard unit costs in its budget. A second bill[4] provides for the appointment of some officer as comptroller by every municipality. Every person so appointed must pass a qualifying examination given by the Department

[2] Assembly, No. 434.
[3] Senate, No. 225.
[4] Senate, No. 222.

of Municipal Accounts and later be removed by the Department for failure to comply with its regulations. A third bill[1] provides for the appointment by the governor of a full-time assessor in each county to replace all other assessing authorities, and to be under the supervision of the state tax commissioner. A fourth bill[2] would vest the control of highways (outside the state system) in the county boards, except in municipalities with an organized engineering department of a minimum standard. Construction and maintenance work would be under the supervision of the state highway commission, and state aid would be granted only with the highway commission's approval.

The fifth bill,[3] setting up a comprehensive budget system for all municipalities, attempts to compel a real balance of expenditures and income, and to prevent promiscuous borrowing. It gives the state commissioner of municipal accounts authority to enforce the requirements. It is mandatory for the municipality to provide in appropriations and tax levy for debt service, delinquent taxes, and public improvements. The budget-making body must estimate delinquent taxes at not less than the amount delinquent the preceding year,[4] and must appropriate for any new improvement an amount equal to the largest annual payment on the loan for interest and amortization. Budget making bodies are compelled to make 5 per cent cuts in expenditures, other than debt service, when tax delinquencies exceed specified amounts. Budgets must be submitted for approval to the commissioner of municipal accounts who may add the mandatory appropriations if they have been neglected, and may cut inflated estimates of revenue; he may require increases in the tax rate to make the budget balance.

A bill revising the "bond act"[5] limits borrowing by percentage of assessed valuation and by ratio of debt service to debt limit. Bond issues may be submitted to popular referendum by one-third of the "governing body" and by property owners representing one-tenth of the assessed valuations. Only serial bonds may be issued and no annual installment may exceed the smallest prior installment by more than 50 per cent. Bond issue ordinances must be submitted to the commissioner of municipal accounts for his certificate that they are in harmony with the bond act. Supplementary bills attempt to put municipalities more nearly on a cash basis by providing for inclusion in the budget of last year's unpaid (delinquent) tax revenue notes and bonds,[6] and by advancing the dates for tax levy and collection.[7]

GEORGE A. GRAHAM.

[1] Assembly, No. 424.

[2] Senate, No. 228.

[3] Assembly, No. 436.

[4] A supplementary bill, Assembly, No. 427, provides that if a budget contains no appropriation for delinquent taxes the "authority fixing the tax rate" must add 3 per cent to the amount to be raised by the tax.

[5] Assembly, No. 435.

[6] Assembly, No. 421.

[7] Assembly, No. 425.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, etc., required by the Act of Congress of August 24, 1912, of NATIONAL MUNICIPAL REVIEW, published monthly at Concord, New Hampshire, for April 1, 1932.

State of New York, County of New York, ss.

Before me, a notary public, in and for the State and county aforesaid, personally appeared H. W. Dodds, who, having been duly sworn according to law, deposes and says that he is the editor of the NATIONAL MUNICIPAL REVIEW, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, to wit: 1. That the names and addresses of the publisher, editor, managing editor, and business managers are: Publisher, National Municipal League, 261 Broadway, New York, N. Y.; Editor, H. W. Dodds, 261 Broadway, New York, N. Y.; Managing Editor, None; Business Managers, None. 2. That the owners are: The National Municipal League, a voluntary association, incorporated in 1923. The officers of the National Municipal League are: Murray Seasongood, President; Carl H. Pforzheimer, Treasurer; Russell Forbes, Secretary. 3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: none. 4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

Sworn to and subscribed before me this 15th day of March, 1932. H. W. DODDS, *Editor.*

MARY DONOVAN (MONAGHAN). (My commission expires March 30, 1933.)